

# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 129. STUDENT ATTENDANCE

##### SUBCHAPTER AA. COMMISSIONER'S RULES

###### 19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning the student attendance accounting handbook. The amendment is adopted without changes to the proposed text as published in the June 27, 2025 issue of the *Texas Register* (50 TexReg 3712) and will not be republished; however, the handbook adopted by reference in the rule includes changes at adoption. The amendment adopts by reference the *2025-2026 Student Attendance Accounting Handbook*. The handbook provides student attendance accounting rules for school districts and charter schools.

**REASONED JUSTIFICATION:** TEA has adopted its student attendance accounting handbook (SAAH) in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update §129.1025 to refer to the most recently published SAAH.

Each annual SAAH provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. TEA distributes FSP resources under the procedures specified in each current SAAH. The final version of the SAAH is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to §129.1025 adopts by reference the SAAH for the 2025-2026 school year. The adopted handbook, including a change document with a comprehensive list of changes, is available on the TEA website at <https://tea.texas.gov/finance-and-grants/financial-compliance/student-attendance-accounting-handbook>.

Significant changes to the *2025-2026 Student Attendance Accounting Handbook* include the following.

###### *Section 1 Overview*

Texas Education Code (TEC), Chapter 48, specifically §48.008, establishes the requirements for adopting an attendance accounting system and reporting attendance accounting data through Texas Student Data System Public Education Infor-

mation Management (TSDS PEIMS). The following changes implement reporting requirements for attendance and funding.

The description of Section 12 of the handbook is revised to include virtual and hybrid instruction in courses and programs offered by the Texas Virtual School Network (TXVSN).

###### *Section 2 Audit Requirements*

TEC, Chapter 48, specifically §48.004, establishes the requirements for violation of presenting reports that contain false information. TEC, §48.004, authorizes the commissioner of education to require audit reports to be submitted for review and analysis. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Student identification data elements are revised to include gender codes, English as a Second Language (ESL) program types (Section 6), gifted/talented indicators (Section 8), and Pregnancy-Related Services (PRS) indicators (Section 9), where applicable. In items 22 and 23 of the list of required data items, Student Detail Reports are revised to include full-time equivalent (FTE) calculations for all special programs. Special program documentation is updated to include proof of service (for example, a doctor's note for pregnancy notification).

###### *Section 3 General Attendance*

TEC, §25.081, and Chapter 48, specifically §48.005, establish the general parameters for attendance and school operation. The following changes implement reporting requirements for attendance and funding.

Language is revised to state that districts offering full-day prekindergarten (pre-K) for eligible four-year-olds must provide 75,600 operational minutes. Language is revised to state that average daily attendance (ADA) code 0 Enrolled, Not in Membership applies to students in private or non-district early childhood programs receiving district services (e.g., speech therapy) and private school students (ages 5-21 years old) receiving special education through an individualized services plan. Language is added to state that a student with a disability may receive special education services through age 21 if the district determines they met Texas criteria after earning a diploma elsewhere. The district must evaluate the transcript and confirm funding eligibility. Language listing the conditions used to determine if a student should have assigned the StudentCharacteristic 02 (Immigrant) element code for TSDS PEIMS reporting purposes is revised. Contact information for noncompliance reporting is updated. Language is revised to state that a student is ineligible for ADA if assigned out of school suspension on the first day of school. Language is revised to state that a student experiencing homelessness or a student who is in foster care should be admitted temporarily for 30 days,

even if acceptable evidence of vaccination is not available. Language is added to state that, beginning in the 2026-2027 school year, district calendars must include extra minutes or makeup days for at least two missed days due to bad weather or health and safety concerns. Language is revised to state that a student should not be withdrawn if the student is being excused from attendance due to a serious or life-threatening illness. Language is updated to specify that waiver rules that apply to the whole district now apply also to individual campuses. Language is revised to address campus closures due to unforeseen circumstances.

In response to public comments, Section 3.2.2 of the SAAH was modified at adoption to clarify guidance on funding eligibility for aide periods.

In response to public comments, Section 3.2.3.1 of the SAAH was modified at adoption to address House Bill (HB) 2757, 89th Texas Legislature, Regular Session, 2025, which requires school districts to allow a student of a military member of a foreign military force stationed in the United States to establish minimum eligibility age requirements for enrollment.

In response to public comments, Section 3.4.4 of the SAAH was modified at adoption to provide guidance on behavioral threat assessments transfer through the Sentinel school safety platform.

In response to public comments, Section 3.6.2 of the SAAH was modified at adoption to include a rule regarding Senate Bill (SB) 1049 related to absences due to a released time course.

In response to public comments, Section 3.6.3 of the SAAH was modified at adoption to provide clarification on students with life threatening illness.

In response to public comments, Section 3.6.3 of the SAAH was modified at adoption to refer to the required district-adopted form and the form's required information as a result of HB 367, 89th Texas Legislature, Regular Session, 2025.

In response to public comments, Section 3.6.3 of the SAAH was modified at adoption with updates from HB 367 related to documentation requirements for serious or life-threatening illness.

In response to public comments, Section 3.8.1.1 of the SAAH was modified at adoption to clarify the designation of the additional days built into the school calendar.

#### *Section 4 Special Education*

TEC, Chapter 48, specifically §48.102, authorizes funding for special education in certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for special education to account for attendance and funding.

The ADA eligibility code for private or homeschool students between the ages of 5-21 years is revised. Language concerning instructional setting codes are updated for clarification. Language concerning reporting requirements for students reported with instructional setting code 00 is updated. Language is revised to correct requirements for placing a student receiving special education services in a homebound setting. Language is revised to clarify the eligible ADA code for students receiving special education services who are five years of age or older and being served in a homebound setting. Language is revised to provide additional guidelines for instructional setting codes, and A/B block schedule. Language referencing the attribution code for

the Texas School for the Deaf, speech therapy, and Special Education Program Services 23, 24, and 25 is updated to align with the new Texas Education Data Standards (TEDS). Language is revised to state that, starting in the 2025-2026 school year, special education and related services for eligible children with disabilities ages 3-5 will be provided through Early Childhood Special Education (ECSE) and not in kindergarten. Revisions are made to codes, examples, and special education terminology to align with TEDS.

#### *Section 5 Career and Technical Education (CTE)*

TEC, Chapter 48, including §48.106, authorizes funding for career and technical education (CTE) in certain circumstances. TEC, Chapter 29, Subchapter F, establishes general parameters for CTE programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for CTE to account for attendance and funding.

As specified in section 5.10, Documentation, a requirement is added that local education agencies (LEAs) must maintain documentation showing a minimum of 45 minutes per day for each CTE course. Clarifications are made to areas concerning CTE course state-weighted funding, how CTE contact hours are earned, and continuing CTE contact hours for students participating in paid or unpaid work-based instruction. Text concerning contracting with other entities to provide CTE courses is removed. The term "service id" is replaced with "course code," and the section includes a reference to the singular training plan form. In addition, the new language adds a requirement for student reports to be recorded using the TSDS PEIMS Course Transcript Entity when they complete a semester of a course. Updates are made to TAC links in the footnotes and a course name, and new examples and references to those are included.

#### *Section 6 Bilingual/English as a Second Language (ESL)*

TEC, Chapter 48, specifically §48.105, authorizes funding for bilingual or special language programs in certain circumstances. TEC, Chapter 29, Subchapter B, establishes general parameters for bilingual and special language programs. TEC, §48.004, authorizes the commissioner to require reports as may be necessary to implement and administer the FSP. The following changes implement reporting for bilingual and special language programs to account for attendance and funding.

Language is updated to align with recently revised commissioner rules as well as the TSDS PEIMS data descriptions. Language is revised to state that a district may offer a bilingual program beyond required grade levels or before reaching the minimum emergent bilingual (EB) student requirement. Language is revised to state that English for speakers of other languages (ESOL) programs I and II must be taught by certified teachers with ESL or bilingual certification. Language is revised to state that each student in a bilingual or ESL program, or under an alternative methods descriptor, must be identified with the appropriate descriptor in the attendance accounting system. Language is revised to state that bilingual/ESL eligible days must be removed if a student is in a disciplinary setting for over five days without receiving equivalent services from a certified teacher. Language is updated to clarify exit procedures, monitoring of reclassified students, Home Language Survey (HLS) requirements, and Texas English Language Proficiency Assessment System (TELPAS) scores to align with recently revised commissioner rules as well as the TSDS PEIMS data descriptions. Language is revised to state that a district must

promptly record the appropriate bilingual, ESL, or alternative method descriptor once a student meets eligibility requirements.

In response to public comments, Section 6.8 of the SAAH was modified at adoption to reflect a link to the reclassification criteria chart.

#### *Section 7 Prekindergarten (Pre-K)*

TEC, Chapter 29, Subchapter E, establishes special general parameters for pre-K programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for pre-K to account for attendance and funding.

Language is revised to reflect student eligibility for free public pre-K. Language is revised to state that a district must submit the required documentation to the Texas Department of Agriculture (TDA) to qualify a student for the National School Lunch Program (NSLP) and code an eligible pre-K student as economically disadvantaged for state compensatory education funding. Examples in section 7.6.1 are updated.

In response to public comments, Section 7.2 of the SAAH was modified at adoption to clarify both the eligibility criteria and the necessary supporting documentation that specifically apply to classroom teachers as defined in TEC, §5.001.

#### *Section 8 Gifted/Talented*

TEC, Chapter 29, Subchapter A, establishes parameters for non-traditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for gifted/talented to account for attendance and funding.

Language regarding enrollment and withdrawal procedures and examples to align with TEDS are updated.

#### *Section 9 Pregnancy-Related Services (PRS)*

TEC, Chapter 48, including §48.104, authorizes funding under certain circumstances for students who are pregnant. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes are implemented by reporting for PRS to account for attendance and funding.

Language is revised to state that Student Detail Reports must include a PRS indicator for all students served in the PRS program and eligible for state funding. Language regarding test administration procedures when a student is in a compensatory education home instruction (CEHI) program setting is clarified.

#### *Section 10 Alternative Education Programs (AEPS) and Disciplinary Removals*

TEC, Chapter 48, specifically §48.270, establishes the requirements for violation of presenting reports that contain false information. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. TEC, §44.010, allows for the review of budget, fiscal, and audit reports to determine whether all legal requirements have been met. The following changes implement reporting for audit requirements to account for attendance and funding.

Language is revised to update TSDS PEIMS reporting elements, to update out of school suspension policies to align with the preferred terminology, and to clarify that TEC, Chapter 37, provides statutory discipline requirements and the TEDS provides reporting guidelines.

#### *Section 11 Nontraditional Programs*

TEC, Chapter 29, Subchapter A, establishes special general parameters for nontraditional programs. TEC, Chapter 48, including §48.005, establishes ADA requirements and authorizes funding for certain circumstances. TEC, §48.004, authorizes the commissioner to require reports that may be necessary to implement and administer the FSP. The following changes implement reporting for nontraditional programs to account for attendance and funding.

Language is revised to clarify campus wide school calendar requirements concerning Additional Days School Year (ADSY) and to state that the ADSY waiver follows the same requirements as the missed school day waiver.

In response to public comments, Section 11.3 of the SAAH was modified at adoption to include guidance for reporting contact hours for R-PEP.

In response to public comments, Section 11.5 of the SAAH was modified at adoption to include updated language for ADSY eligibility, calendar and instructional requirements, formula funding, and scheduling based on HB 2, which addressed pre-K eligibility for students of classroom teachers.

#### *Section 12 Virtual, Remote, and Electronic Instruction*

TEC, Chapter 30A, establishes the general parameters for TXVSN. TEC, §30A.153, authorizes funding for TXVSN for the FSP under certain circumstances. TEC, §48.004, authorizes the commissioner to adopt reports that may be necessary to implement and administer the FSP. The following changes implement reporting for TXVSN to account for attendance and funding.

Revisions are made to add the expansion of the TXVSN program and course catalog to include Grades 6-12; to outline enrollment, funding eligibility, and successful course completion requirements; to describe expansion of TXVSN online schools (OLS) to Grades 3-8 and 9-12; and to specify that student enrollment in TXVSN courses or OLS programs does not prevent a district from serving students in special programs like special education, CTE, bilingual/ESL, or PRS, nor from receiving weighted funding if all program requirements are met. Language is revised to state that a school district or open-enrollment charter school must not require a student to enroll in an electronic course. Clarification is made regarding remote synchronous instruction and the application for remote homebound or remote conferencing waivers for both general education students and students receiving special education services. Language concerning schools with TXVSN waivers or approved remote or hybrid dropout recovery programs for on campus online courses is clarified.

In response to public comments, clarification was provided at adoption that guidance regarding SB 569, 89th Texas Legislature, Regular Session, 2025, will be provided outside of the 2025-2026 SAAH and that future guidance will be included in the 2026-2027 SAAH.

#### *Glossary*

Definitions are updated along with the link to the TSDS PEIMS webpage. A link is added to the Every Student Succeeds Act (ESSA) webpage.

In response to public comments, the Glossary was modified at adoption to reflect the requirements of HB 6, 89th Texas Legislature, Regular Session, 2025, which addressed disciplinary placement for students with disabilities.

**SUMMARY OF COMMENTS AND AGENCY RESPONSES:** The public comment period on the proposal began June 27, 2025, and ended July 28, 2025. Following is a summary of the public comments received and agency responses.

### *Section 3 General Attendance Requirements*

**Comment:** A coordinator of data quality and student information recommended clearer guidance on FSP funding eligibility for student aide periods, including office, library, athletic, and teacher aide roles, and suggested adding this clarification to the Two-through-Four-Hour Rule eligibility chart.

**Response:** The agency agrees, and Section 3.2.2 of the SAAH has been updated at adoption to include these types of courses for eligibility.

**Comment:** A director of data integrity commented that the SAAH needs to address HB 2757, 89th Texas Legislature, Regular Session, 2025.

**Response:** The agency agrees, and Section 3.2.3.1 Additional Requirements for Minimum Eligible Age has been updated at adoption to add reference to HB 2757 for enrollment.

**Comment:** A director of data integrity and a teacher commented that the new Sentinel system is designed for reporting threat assessments, yet the SAAH still requires submission through Texas Records Exchange system (TREx). The commenter stated that clarification is needed to determine if districts are expected to report through both systems and if Sentinel is the designated system, the TREx requirement should be removed from the SAAH.

**Response:** The agency agrees and provides the following clarification. In accordance with 19 TAC §103.1213, effective August 1, 2025, behavioral threat assessments must be transferred utilizing the Sentinel school safety platform. Discipline records will continue to be transferred in accordance with existing processes. Section 3.4.4 has been updated at adoption to reflect that behavioral that assessment records should not be transferred through TREx and affirming that disciplinary records, including incomplete disciplinary actions, must still be transferred using TREx.

**Comment:** A director of information services and a director of integrity inquired if the adopted version of the SAAH will include guidance on SB 1049, 89th Texas Legislature, Regular Session, 2025.

**Response:** The agency agrees that SB 1049 should be included in the SAAH. At adoption, Section 3.6.2 has been updated to include language regarding SB 1049, related to absences due to a released time course.

**Comment:** A Texas educator asked for clarification regarding Section 3.6.3, specifically why the provision for life-threatening illness does not extend to students who are fully admitted to treatment facilities.

**Response:** The agency agrees that clarification is necessary and has added that a student may be marked absent due to a serious or life-threatening illness, and that a parent can submit a

district-approved form with certification from a physician. The agency has modified Section 3.6.3 at adoption to align with HB 367, which addresses documentation requirements for serious and life-threatening illnesses.

**Comment:** The Texas Council of Administrators of Special Education (TCASE) commented that the SAAH must be updated to reflect HB 367, which updates the procedures and requirements related to excused absences for serious or life-threatening illnesses.

**Response:** The agency agrees, and Section 3.6.3 has been modified accordingly at adoption to reflect requirements needed on district-adopted forms.

**Comment:** A teacher asked for more guidance regarding HB 367 and the forms districts need to create to document life-threatening illness absences.

**Response:** The agency agrees more guidance is necessary. Section 3.6.3 has been updated at adoption to include language regarding HB 367 and the form requirements.

**Comment:** A director of data integrity commented that HB 367 prohibits schools from requiring documentation beyond the standardized form verifying a serious or life-threatening condition. However, current SAAH guidance mandates submission of discharge summaries and appears to conflict with HB 367. The commenter recommended removing the discharge paperwork requirement from SAAH.

**Response:** The agency agrees and has modified Section 3.6.3 at adoption to implement HB 367. The updated language refers to the required district-adopted form and the form's required information. Additionally, the district is not authorized to ask for more information on their form than what is listed in statute.

**Comment:** A coordinator of data quality and student information requested clarification on how additional days built into the school calendar should be designated, specifically whether they must be labeled as bad weather days or if they can remain undesignated.

**Response:** The agency agrees clarification is needed, and Section 3.8.1.1 has been updated at adoption to include how those days must be designated on the calendar.

**Comment:** A director of data integrity commented that, in Section 3.8.2, the use of the word "some" in the first two examples places an undue burden on districts, potentially requiring separate calendars for individual schools. The commenter stated that this could lead to inequities and low attendance if only a few schools must make up time. The commenter recommended keeping the examples district-wide and allowing a missed school day or minutes waiver to help LEAs maintain calendar consistency.

**Response:** The agency disagrees. The examples relate to early closure and not a missed day of instruction. A missed school day waiver is not available. Calendars are a local decision of the district in which they may build in additional minutes at the start of the year or add minutes as needed at the district or campus levels to account for any unanticipated events or closures.

**Comment:** A director of data integrity asked for clarity on how to handle cases where a student temporarily relocates out of state (e.g., for acting or sports). The commenter stated that if no virtual option is available, the LEA may need to withdraw the student despite the family residing in-district. The commenter recommended clear guidance and examples to help ensure consistent handling of such situations.

Response: The agency disagrees. The requested clarification directly contradicts established residency definitions in TEC, §25.001(b).

Comment: A director of data integrity commented that, if a student is hospitalized in another state for more than 10 days and no virtual instruction is available, the district is not obligated to provide services. The commenter recommended that the SAAH provide clear guidance to LEAs on when withdrawal is appropriate in such cases.

Response: The agency disagrees. The requested clarification contradicts established residency definitions in TEC, §25.001(b).

#### *Section 4 Special Education*

Comment: TCASE commented that HB 2, 89th Texas Legislature, Regular Session, 2025, and SB 568, 89th Texas Legislature, Regular Session, 2025, will phase out instructional setting codes for special education starting in the 2026-2027 school year, replacing them with a new intensity of services funding model. TCASE recommended that the SAAH be updated to reflect the changes.

Response: The agency disagrees, as these changes will not be effective until the 2026-2027 school year. However, a note of clarification has been added at adoption to the beginning of Section 4.

Comment: TCASE commented regarding HB 6 and requested clarification on the disciplinary placements for students with disabilities in the SAAH, especially regarding in-school suspension, virtual placements, and younger students. TCASE added that additional examples would help ensure consistency and integrity across districts.

Response: The agency disagrees, as this type of guidance is outside the scope of SAAH.

Comment: TCASE commented that, due to the September 1, 2025, effective date of SB 2, 89th Texas Legislature, Regular Session, 2025, the SAAH should update procedures for parents requesting evaluations for Educational Savings Account (ESA) program participation.

Response: The agency disagrees that changes are necessary at this time. ESAs will go into effect with the 2026-2027 school year; any necessary changes will be incorporated into the 2026-2027 SAAH.

Comment: TCASE requested that the SAAH clarify what qualifies as an individualized education program (IEP) for ESA eligibility in regards to changes made by SB 2, since current definitions only include special education IEPs and private school service plans.

Response: The agency disagrees that changes are necessary at this time. ESAs will go into effect with the 2026-2027 school year; any necessary changes will be incorporated into the 2026-2027 SAAH.

Comment: TCASE commented that language should be added to the SAAH clarifying that, starting in 2026-2027 school year, ESA participants cannot be dually enrolled in early childhood special education, as public school enrollment disqualifies ESA eligibility. TCASE added that future guidance is also needed for ESA students who graduate but remain eligible for services through age 21.

Response: The agency disagrees that changes are necessary at this time. ESAs will go into effect with the 2026-2027 school year;

any necessary changes will be incorporated into the 2026-2027 SAAH.

Comment: TCASE commented that the SAAH should be updated to reflect the various changes to virtual education made by SB 569.

Response: The agency disagrees. TEA will provide guidance regarding SB 569 outside of the 2025-2026 SAAH and that guidance will be included in the 2026-2027 SAAH.

#### *Section 6 Bilingual/ English as a Second Language*

Comment: A director of data integrity commented that the SAAH and corresponding linked funding charts need to be aligned with changes made by SB 2185, 89th Texas Legislature, Regular Session, 2025, which adjusts EB funding for alternative bilingual/ ESL programs.

Response: The agency agrees, and the link to the reclassification criteria chart in Section 6.8 has been updated at adoption to align with SB 2185.

Comment: A Texas administrator commented that there is a need for reviewing Section 6.8 Reclassification Criteria and Exit procedures to confirm if the statement delivered with no second language acquisition supports is still accurate, especially with the recent changes allowing students to receive accommodations on the Reading and English State of Texas Assessments of Academic Readiness (STAAR®) end-of-course assessments and still qualify for reclassification.

Response: The agency agrees, and the SAAH has been updated at adoption to reflect a link to the reclassification criteria chart.

#### *Section 7 Prekindergarten (Pre-K)*

Comment: A Texas teacher and a deputy superintendent of business inquired if the proposed 2025-2026 SAAH includes new eligibility criteria that would allow children of district employees to qualify for free pre-K. Additionally, a director of data integrity commented that the SAAH should provide clear guidance and examples regarding changes made by HB 2 to pre-K eligibility for children of classroom teachers. The commenter stated that the SAAH should include the eligibility category, specific documentation for verification of employment, and clarify changes in eligibility if the teacher leaves before April 2.

Response: The agency agrees that new eligibility criteria are needed. At adoption, TEA has added Sections 7.2.8 Pre-K Eligibility Based on a Parent's Employment as a Classroom Teacher and 7.2.8.1 Documentation Required to provide further clarity. The new eligibility criteria specifically apply to classroom teachers as defined in TEC, §5.001.

#### *Section 11 Nontraditional Programs*

Comment: A Texas teacher requested adding guidance to the SAAH for districts participating in the Rural Pathway Excellence Partnership Program (R-PEP).

Response: The agency agrees that R-PEP guidance should be included, and at adoption Section 11.3 has been updated to include guidance for reporting contact hours for R-PEP.

Comment: A Texas teacher asked if any updated guidance regarding ADSY will be included in the 2025-2026 SAAH.

Response: The agency agrees this language should be included. At adoption, Section 11.5 was updated with the language for ADSY eligibility, calendar and instruction require-

ments, formula finding, and scheduling based on HB 3, which addresses pre-K eligibility for students of classroom teachers.

Comment: A coordinator of data quality and student information commented that fully online dual enrollment courses need clear instruction on how FSP funding eligibility is maintained and which requirements must be met if the instructor is not present or available for real-time, two-way communication and instruction.

Response: The agency disagrees that clarification is needed. Guidance in Sections 11.3.1, 11.3.1.3, and 12.5 supports ADA generation and FSP funding eligibility when attendance requirements are met, including for self-paced and non-traditional instructional formats.

#### *Section 12 Virtual, Remote and Electronic Instruction*

Comment: A director of data integrity commented that the SAAH is silent on the requirements for both removing the current TXVSN language and replacing it with the elements of SB 569. The SAAH is also silent on how districts will be required to take attendance and the documentation needed for virtual instruction.

Response: The agency agrees this information is not included in the proposed 2025-2026 SAAH, and at adoption a statement was added that guidance regarding changes made by SB 569 will be provided outside of the 2025-2026 SAAH and included in the 2026-2027 SAAH.

Comment: A director of data integrity commented that, since SB 569 allows virtual instruction, the special education (SPED) waiver for virtual homebound students should be removed, as virtual learning is now a standard method and should be equally available to SPED students.

Response: The agency disagrees that the SPED waiver for virtual homebound students should be removed. Guidance regarding changes made by SB 569 will be provided outside of the 2025-2026 SAAH and included in the 2026-2027 SAAH. The handbook was updated at adoption to include a note related to this guidance.

#### *Glossary*

Comment: A parent commented that the glossary term entry for in-school suspension (ISS) should be updated to reflect HB 6, which removes the previous three-day limit. The parent stated that under HB 6, ISS is no longer subject to any time restriction.

Response: The agency agrees, and the glossary has been updated at adoption to reflect the new definition due to changes made by HB 6.

**STATUTORY AUTHORITY.** The amendment is adopted under Texas Education Code (TEC), §5.001, as amended by House Bill (HB) 2, 89th Texas Legislature, Regular Session, 2025, which states the definition of classroom teacher; TEC, §7.055(b)(35), which states that the commissioner shall perform duties in connection with the Foundation School Program (FSP) as prescribed by TEC, Chapter 48; TEC, §12.251, which states the definition of adult high school charter school programs; TEC, §25.001, as amended by HB 2757, 89th Texas Legislature, Regular Session, 2025, which states that a school district must allow for a student of a military member of a foreign military force stationed in the United States to establish minimum eligibility age requirements for enrollment; TEC, §25.0344, which states that a parent serving as a peace officer or service member may request a transfer to a district and campus of their choice; TEC, §25.081, which states that, for each school year, each

school district must operate so that the district provides for at least 75,600 minutes, including time allocated for instruction, intermissions, and recesses, for students. TEC, §25.081(d), authorizes the commissioner to adopt rules to implement the section. TEC, §25.081(g), states that a school district may not provide student instruction on Memorial Day but that if a school district would be required to provide student instruction on Memorial Day to compensate for minutes of instruction lost because of school closures caused by disaster, flood, extreme weather conditions, fuel curtailment, or another calamity, the commissioner shall approve the instruction of students for fewer than the number of minutes required under TEC, §25.081(a); TEC, §25.0812, which states that school districts may not schedule the last day of school for students before May 15; TEC, §25.087, as amended by HB 367, 89th Texas Legislature, Regular Session, 2025, which provides purposes for which a school district shall excuse a student from attending school; TEC, §25.0875, as added by Senate Bill (SB) 1049, 89th Texas Legislature, Regular Session, 2025, which provides purposes for which a school district shall excuse a student from attending school for a released time course; TEC, §28.02124, which states that a parent may request that a student repeat a course for high school credit TEC, §29.081, which states that attendance accounting and FSP funding for Optional Flexible School Day Program (OFSDP) participation may be generated through a remote or hybrid dropout recovery education program; TEC, §29.0822, which enables a school district to provide a program under this section that meets the needs of students described by TEC, §29.0822(a), for a school district that meets application requirements, including allowing a student to enroll in a dropout recovery program in which courses are conducted online. TEC, §29.0822, authorizes the commissioner to adopt rules for the administration of the section; TEC, §30A.153, which states that, subject to the limitation imposed under TEC, §30A.153(a-1), a school district or open-enrollment charter school in which a student is enrolled is entitled to funding under TEC, Chapter 48, or in accordance with the terms of a charter granted under TEC, §12.101, for the student's enrollment in an electronic course offered through the state virtual school network in the same manner that the district or school is entitled to funding for the student's enrollment in courses provided in a traditional classroom setting, provided that the student successfully completes the electronic course. TEC, §30A.153(d), authorizes the commissioner to adopt rules necessary to implement the section, including rules regarding student attendance accounting; TEC, §37.005, as amended by HB 6, 89th Texas Legislature, Regular Session, 2025, which states that there is no limit to the number of days a student may be assigned to in-school suspension; TEC, §48.004, which states that the commissioner shall adopt rules, take action, and require reports consistent with TEC, Chapter 48, as necessary to implement and administer the FSP; TEC, §48.005, which states that average daily attendance (ADA) is the quotient of the sum of attendance for each day of the minimum number of days of instruction as described under TEC, §25.081(a), divided by the minimum number of days of instruction. TEC, §48.005(m), authorizes the commissioner to adopt rules necessary to implement the section. Subsections (m-1) and (m-2) address virtual or remote instruction-related funding; TEC, §48.102, which states that for each student in ADA in a special education program under TEC, Chapter 29, Subchapter A, in a mainstream instructional arrangement, a school district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 1.15. For each full-time equivalent student ADA attendance in a special

education program under TEC, Chapter 29, Subchapter A, in an instructional arrangement other than a mainstream instructional arrangement, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by a weight determined according to its instructional arrangement; TEC, §48.103, which states that for each student that a district serves who has been identified as having dyslexia or a related disorder, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 or a greater amount provided by appropriation; TEC, §48.104, which states that for each student who does not have a disability and resides in a residential placement facility in a district in which the student's parent or legal guardian does not reside, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.2 or, if the student is educationally disadvantaged, 0.275. For each full-time equivalent student who is in a remedial and support program under TEC, §29.081, because the student is pregnant, a district is entitled to an annual allotment equal to the basic allotment multiplied 2.41; TEC, §48.105, as amended by SB 2185, 89th Texas Legislature, Regular Session, 2025, which states that for each student in ADA in a bilingual education or special language program under TEC, Chapter 29, Subchapter B, a district is entitled to an annual allotment equal to the adjusted basic allotment multiplied by 0.1 or 0.15 if the student is in a bilingual education program using a dual language immersion/one-way or two-way program model, and for students not described in subdivision (1), 0.05 if the student is in bilingual education program using a dual language immersion/two-way program model; TEC, §48.106, which states that for each full-time equivalent student in ADA in an approved career and technology education program in Grades 7-12 or in career and technology education programs, a district is entitled to an annual allotment equal to the basic allotment multiplied by a weight of 1.35 and \$50 for each student that is enrolled in two or more advanced career and technology classes for a total of three or more credits; a campus designated as a Pathways in Technology Early College High School (P-TECH) school under TEC, §29.556; or a campus that is a member of the New Tech Network and that focuses on project-based learning and work-based education; TEC, §48.108, which states that for each student in ADA in Kindergarten-Grade 3, a district is entitled to an annual allotment equal to the basic allotment multiplied by 0.1 if the student is educationally disadvantaged or a student of limited English proficiency, as defined by TEC, §29.052, and in bilingual education or special language program under TEC, Chapter 29, Subchapter B; TEC, §48.109, which states that for each student in the gifted and talented category, the district is entitled to an annual allotment equal to the basic allotment multiplied by 0.07 for each school year or a greater amount provided by appropriation. If by the end of the 12th month after receiving an allotment for developing a program a district has failed to implement a program, the district must refund the amount of the allotment to the agency within 30 days. Not more than five percent of a district's students in ADA are eligible for funding under this section. If the state funds exceed the amount of state funds appropriated in any year for the programs, the commissioner shall reduce the districts tier one allotment. If funds are less than the total amount appropriated for the school year, the commissioner shall transfer the remainder to any program. After each district has received allotted funds for this program, the State Board of Education may use up to \$500,000 of the funds allocated under this section for other programs; TEC, §48.270, which states that when, in the opinion of the agency's director of school audits, audits or reviews of accounting, enrollment, or other records of a school district reveal deliberate falsification of

the records, or violation of the provisions of TEC, Chapter 48, through which the district's share of state funds allocated under the authority of this chapter would be, or has been, illegally increased, the director shall promptly and fully report the fact to the State Board of Education, the state auditor, and the appropriate county attorney, district attorney, or criminal district attorney; and TEC, §49.204, which states that a school district with a local revenue in excess of entitlement may reduce the district's local revenue level by serving non-resident students who transfer to the district and are educated by the district but who are not charged tuition.

**CROSS REFERENCE TO STATUTE.** The amendment implements Texas Education Code §§5.001, as amended by House Bill (HB) 2, 89th Texas Legislature, Regular Session, 2025; 7.055(b)(35); 12.251; 25.001, as amended by HB 2757, 89th Texas Legislature, Regular Session, 2025; 25.0344; 25.081; 25.0812; 25.087, as amended by HB 367, 89th Texas Legislature, Regular Session, 2025; 25.0875, as added by Senate Bill (SB) 1049, 89th Texas Legislature, Regular Session, 2025; 28.02124, 29.081; 29.0822; 30A.153; §37.005, as amended by HB 6, 89th Texas Legislature, Regular Session, 2025; 48.004, 48.005, 48.102, 48.103, 48.104, 48.105, as amended by SB 2185, 89th Texas Legislature, Regular Session, 2025; 48.106; 48.108 48.109; 48.270; and 49.204.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

Texas Education Agency

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For further information, please call: (512) 475-1497

## PART 7. STATE BOARD FOR EDUCATOR CERTIFICATION

### CHAPTER 235. CLASSROOM TEACHER CERTIFICATION STANDARDS

The State Board for Educator Certification (SBEC) adopts the repeal of 19 Texas Administrative Code (TAC) §§235.115, 235.117, 235.131, 235.133, and 235.135 and new §§235.115, 235.117, 235.131, 235.135, and 235.137, concerning classroom teacher certification standards. The repeal and new rules are adopted without changes to the proposed text as published in the May 30, 2025 issue of the *Texas Register* (50 TexReg 3185). The rules will not be republished. The adopted revisions repeal standards in current Subchapters F and G to combine and align language across educator standards in adopted new Subchapter F. The revisions also implement the statutory requirements of House Bill (HB) 2256, 87th Texas Legislature, Regular Session, 2021, and define the educator standards for the Bilingual Special Education certificate, as recommended by the SBEC-approved educator standards advisory committee.

REASONED JUSTIFICATION: The SBEC rules in 19 TAC Chapter 235, Classroom Teacher Certification Standards specify the standards for the classroom teacher class of certificates, including Subchapter F, Supplemental Certificate Standards, and Subchapter G, Special Education Certificate Standards. The SBEC is statutorily authorized to ensure that all candidates for certification or renewal demonstrate the knowledge and skills necessary to improve the performance of Texas's population and required to appoint educator standards advisory committee members to recommend standards for each class of certificate. The educator standards advisory committees include practicing educators, school district personnel, experts, and educator preparation program (EPP) faculty. These individuals collaborate to draft new and review existing educator standards to ensure that the educator standards align with the commissioner's educator standards, reflect best practices, and, where applicable, align with the Texas Essential Knowledge and Skills adopted by the State Board of Education (SBOE).

*Adopted New 19 TAC Chapter 235, Subchapter F, and Repeal of Chapter 235, Subchapters F and G:*

The adoption reflects the reorganization and combination of educator standard groups into one subchapter and alignment of the language of standard sets across 19 TAC Chapter 235. Adopted new Subchapter F also includes the new classroom teacher certification standards to implement HB 2256, 87th Texas Legislature, Regular Session, 2021.

*HB 2256 (2021), Bilingual Special Education Certification Requirements*

HB 2256 requires the SBEC to implement a new Bilingual Special Education educator certificate. The intent of the certificate is to ensure that there are teachers with special training in providing instruction to emergent bilingual students with disabilities. HB 2256 specifies that to be eligible for the certificate, a candidate must complete EPP coursework, with skills-based course of instruction on providing instruction to emergent bilingual students with disabilities, including the foundations of bilingual and second language special education; providing individualized education programs for emergent bilingual students with disabilities; providing assessment of emergent bilingual students with and without disabilities; developing teaching methods to recognize the intellectual, developmental, and emotional needs of students in dual language and transitional bilingual education settings; teaching fundamental academic skills, including reading, writing, and mathematics, to students of limited English proficiency; and creating partnerships with families and school professionals.

Additionally, HB 2256 requires that candidates perform satisfactorily on a Bilingual Special Education Certification exam prescribed by SBEC. The proposed Bilingual Special Education standards will serve as the foundation for this exam.

*Previous SBEC Action to Implement HB 2256 (2021)*

The SBEC has previously taken action to implement HB 2256 across multiple chapters of rules. A summary of previous SBEC action is outlined in the following table.

*Figure 1: 19 TAC Chapter 235, Subchapters F and G - Preamble*

At a future meeting, the SBEC will consider additional rule updates to 19 TAC Chapter 231, Requirements for Public School Personnel Assignments, to further implement HB 2256 and the Bilingual Special Education certificate.

*Adopted Repeal of Subchapters F and G and Adopted New Subchapter F, Supplemental and Special Education Certificate Standards*

The SBEC adopts the repeal of Subchapter F, Supplemental Certificate Standards, and Subchapter G, Special Education Certificate Standards.

The SBEC adopts new Subchapter F, Supplemental and Special Education Certificate Standards, to combine all content pedagogy standards previously adopted in Subchapters F and G.

The following table provides a high-level summary of the reorganization of educator standards in Chapter 235, Subchapters F and G.

*Figure 2: 19 TAC Chapter 235, Subchapters F and G - Preamble*

*Adopted New 19 TAC §235.115. English as a Second Language Standards*

The adopted new 19 TAC §235.115 lists English as a Second Language (ESL) content pedagogy standards for teachers of emergent bilingual students in adopted new Subchapter F, Supplemental and Special Education Certificate Standards.

The adopted new §235.115(a) provides an overview of the ESL content pedagogy standards.

The adopted new §235.115(b) specifies the necessary knowledge and skills related to Foundations of Language Acquisition.

The adopted new §235.115(c) specifies the necessary knowledge and skills related to Linguistically Sustaining Practices.

The adopted new §235.115(d) specifies the necessary knowledge and skills related to Effective Instruction and Assessment Across All Content Areas and Disciplines.

The adopted new §235.115(e) specifies the necessary knowledge and skills related to Language Proficiency Assessment, Program Placement, and Reclassification.

The adopted new §235.115(f) renames the standard group and specifies the necessary knowledge and skills related to Professional Learning, Partnerships, and Student Support.

*Adopted New 19 TAC §235.117. Bilingual Spanish Standards*

The adopted new 19 TAC §235.117 lists Bilingual Spanish content pedagogy standards for classroom teachers of bilingual education programs (Spanish and English) in adopted new Subchapter F, Supplemental and Special Education Certificate Standards.

The adopted new §235.117(a) provides an overview of the Bilingual Spanish content pedagogy standards.

The adopted new §235.117(b) specifies the necessary knowledge and skills related to Language Abilities.

The adopted new §235.117(c) specifies the necessary knowledge and skills related to Linguistically Sustaining Practices.

The adopted new §235.117(d) specifies the necessary knowledge and skills related to Instructional Practice.

The adopted new §235.117(e) specifies the necessary knowledge and skills related to Development and Assessment of Biliteracy.

The adopted new §235.117(f) specifies the necessary knowledge and skills related to Foundations of Bilingual Education.



*Adopted New 19 TAC §235.131. Special Education Standards: Early Childhood-Grade 12*

The adopted new 19 TAC §235.131 lists Special Education content pedagogy standards, for teachers of students who receive special education services (Grades EC-12), including grade-band specific standards, in adopted new Subchapter F, Supplemental and Special Education Certificate Standards.

The adopted new §235.131(a) provides an overview of the Special Education Standards: Early Childhood-Grade 6.

The adopted new §235.131(b) specifies the necessary knowledge and skills related to Legal and Ethical Guidelines.

The adopted new §235.131(c) specifies the necessary knowledge and skills related to Understanding and Addressing Each Individual's Developmental and Learning Needs.

The adopted new §235.131(d) specifies the necessary knowledge and skills related to Subject Matter Content and Specialized Curricular Knowledge.

The adopted new §235.131(e) specifies the necessary knowledge and skills related to Assessment for Data-based Decision Making.

The adopted new §235.131(f) specifies the necessary knowledge and skills related to Supporting Learning Using Effective Instruction.

The adopted new §235.131(g) specifies the necessary knowledge and skills related to Supporting Students' Non-academic Growth.

The adopted new §235.131(h) specifies the necessary knowledge and skills related to Professional Learning and Collaboration.

The adopted new §235.131(i) specifies the necessary knowledge and skills related to Elementary Special Education Teachers (Early Childhood-Grade 6).

The adopted new §235.131(j) specifies the necessary knowledge and skills related to Secondary Special Education Teachers (Grades 6-12).

*Adopted New 19 TAC §235.135. Deafblind Standards: Early Childhood-Grade 12*

The adopted new 19 TAC §235.135 lists Deafblind content pedagogy standards for teachers of students who are Deafblind (Grades 6-12) in adopted new Subchapter F, Supplemental and Special Education Certificate Standards.

The adopted new §235.135(a) provides an overview of the Deafblind Standards: Early Childhood-Grade 12.

The adopted new §235.135(b) specifies the necessary knowledge and skills related to the foundations of Deafblind education.

The adopted new §235.135(c) specifies the necessary knowledge and skills related to Learner Characteristics.

The adopted new §235.135(d) specifies the necessary knowledge and skills related to Evaluation and Assessment.

The adopted new §235.135(e) specifies the necessary knowledge and skills related to Planning for Instruction.

The adopted new §235.135(f) specifies the necessary knowledge and skills related to Learning Environment.

The adopted new §235.135(g) specifies the necessary knowledge and skills related to Instructional Delivery.

The adopted new §235.135(h) specifies the necessary knowledge and skills related to Collaborative Consultation.

The adopted new §235.135(i) specifies the necessary knowledge and skills related to Professional Conduct and Leadership.

The adopted new §235.135(j) specifies the necessary knowledge and skills related to Reflection and Personal Growth.

*Adopted New §235.137. Bilingual Special Education Standards: Early Childhood-Grade 12*

The adopted new 19 TAC §235.137 lists Bilingual Special Education standards for the new Bilingual Special Education Supplemental: Early Childhood-Grade 12 certificate in adopted new Subchapter F, Supplemental and Special Education Certificate Standards. The adopted educator standards emphasize the knowledge and skills necessary to address linguistic and disability-related needs for students with limited English proficiency and establish a solid foundation for bilingual special education students in classroom settings that span Early Childhood-Grade 12.

The adopted new §235.137(a) specifies the purpose and function for the adopted new Bilingual Special Education Supplemental: Early Childhood-Grade 12 certificate standards.

The adopted new §235.137(b) specifies knowledge and skills related to Legal and Ethical Guidelines. This group of standards outlines the bilingual special educator's ability to demonstrate understanding and apply knowledge of both special education and emergent bilingual practices and procedures to effectively integrate both areas as they relate to legal and ethical guidelines.

The adopted new §235.137(c) specifies knowledge and skills related to Knowledge of Students and Factors that Influence Learning. This group of standards outlines the bilingual special educator's ability to demonstrate understanding and apply knowledge of the wide variety of individual student characteristics that influence school success and the appropriate instructional and behavioral methodologies.

The adopted new §235.137(d) specifies knowledge and skills related to Language and Literacy Development. This group of standards requires the bilingual special educator to demonstrate understanding and apply knowledge of the components and methodologies related to biliteracy instruction and instructional best practices for students with disability-related needs and limited English proficiency.

The adopted new §235.137(e) specifies knowledge and skills related to Eligibility, Program Placement, and Assessment. This group of standards requires the bilingual special educator to demonstrate understanding and apply knowledge of the appropriate special education and language proficiency-related services, establishing academic goals, analyzing student data, communicating student achievement, and ongoing assessment of student progress.

The adopted new §235.137(f) specifies knowledge and skills related to Content Knowledge and Instructional Practices. This group of standards requires the bilingual special educator to demonstrate understanding and apply knowledge of instructional best practices in all content areas to design, model, and support learning experiences that are appropriate for each dually identified student.

The adopted new §235.137(g) specifies knowledge and skills related to Student Support, Collaboration, and Professional Responsibilities. This group of standards requires the bilingual special educator to demonstrate understanding and apply knowledge of the professional responsibilities of a bilingual special educator, which include effective communication with families and collaboration with other school and community personnel.

**SUMMARY OF PUBLIC COMMENTS:** The public comment period on the proposal began May 30, 2025, and ended June 30, 2025. The SBEC also provided an opportunity for registered oral and written comments on the proposal at the July 25, 2025 meeting's public comment period in accordance with the SBEC board operating policies and procedures. No public comments were received on the proposal.

The State Board of Education took no action on the review of the repeal of §§235.115, 235.117, 235.131, 235.133, and 235.135 and new §§235.115, 235.117, 235.131, 235.135, and 235.137 at the September 12, 2025 meeting.

## **SUBCHAPTER F. SUPPLEMENTAL CERTIFICATE STANDARDS**

### **19 TAC §§235.115, §235.117**

**STATUTORY AUTHORITY.** The repeals are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.04891, which requires the SBEC to create a Bilingual Special Education certificate and specifies certification requirements for the certificate.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1), (2), and (4); and 21.04891.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez

Director, Rulemaking

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For further information, please call: (512) 475-1497



### **19 TAC §§235.115, 235.117, 235.131, 235.135, 235.137**

**STATUTORY AUTHORITY.** The new sections are adopted under Texas Education Code (TEC), §21.003(a), which states that a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.04891, which requires the SBEC to create a Bilingual Special Education certificate and specifies certification requirements for the certificate.

**CROSS REFERENCE TO STATUTE.** The new sections implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1), (2), and (4); and 21.04891.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## **SUBCHAPTER G. SPECIAL EDUCATION CERTIFICATE STANDARDS**

### **19 TAC §§235.131, 235.133, 235.135**

**STATUTORY AUTHORITY.** The repeals are adopted under Texas Education Code (TEC), §21.003(a), which states that

a person may not be employed as a teacher, teacher intern or teacher trainee, librarian, educational aide, administrator, educational diagnostician, or school counselor by a school district unless the person holds an appropriate certificate or permit issued as provided by the TEC, Chapter 21, Subchapter B; TEC, §21.031, which authorizes the SBEC to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators, and states that in proposing rules under the TEC, Chapter 21, Subchapter B, the SBEC shall ensure that all candidates for certification or renewal of certification demonstrate the knowledge and skills necessary to improve the performance of the diverse student population of this state; TEC, §21.041(b)(1), which requires the SBEC to propose rules that provide for the regulation of educators and the general administration of the TEC, Chapter 21, Subchapter B, in a manner consistent with the TEC, Chapter 21, Subchapter B; TEC, §21.041(b)(2), which requires the SBEC to propose rules that specify the classes of educator certificates to be issued, including emergency certificates; TEC, §21.041(b)(4), which requires the SBEC to propose rules that specify the requirements for the issuance and renewal of an educator certificate; and TEC, §21.04891, which requires the SBEC to create a Bilingual Special Education certificate and specifies certification requirements for the certificate.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code (TEC), §§21.003(a); 21.031; 21.041(b)(1), (2), and (4); and 21.04891.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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## **TITLE 26. HEALTH AND HUMAN SERVICES**

### **PART 1. HEALTH AND HUMAN SERVICES COMMISSION**

#### **CHAPTER 331. LIDDA SERVICE COORDINATION**

##### **26 TAC §§331.1, 331.3, 331.5, 331.7, 331.9, 331.11, 331.13, 331.15, 331.17, 331.19, 331.21, 331.23**

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts amendments to §331.1, concerning Purpose; §331.3, concerning Application; §331.5, concerning Definitions; §331.7, concerning Eligibility; §331.9, concerning Funding Service Coordination; §331.11, concerning Designated LIDDA's Responsibilities; §331.13, concerning Caseloads; §331.15, concerning Termination of Service Coordination; §331.17, concerning Minimum Qualifications; §331.19,

concerning Employee Training; §331.21, concerning Documentation of Service Coordination; and §331.23, concerning Review Process.

Sections 331.5, 331.11, and 331.19 are adopted with changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2917). These rules will be republished.

Sections 331.1, 331.3, 331.7, 331.9, 331.13, 331.15, 331.17, 331.21, and 331.23 are adopted without changes to the proposed text as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2917). These rules will not be republished.

#### **BACKGROUND AND JUSTIFICATION**

The adopted rules implement House Bill (H.B.) 4, 87th Legislature, Regular Session, 2021, to ensure Medicaid recipients, child health care plan program enrollees, and other individuals receiving benefits under a public benefits program administered by HHSC or another health and human services agency have the option to receive services as telemedicine medical services, telehealth services, or other telecommunications or information technology to the extent it is cost effective and clinically effective. The adopted rules define terms pertaining to the implementation of H.B. 4, such as audio-only, audio-visual, and in person to make the meaning of these terms clear. The adopted rules update the documentation requirements for service coordination to identify if a contact with an individual is in person, by audio-visual communication, or by audio-only communication and the location of the contact.

The adopted rules update the minimum qualifications and training requirements for service coordinators, including training on person-centered service planning. These rules ensure that a service coordinator is qualified to provide service coordination. The adopted rules require the HHSC Service Coordination Assessment form to identify the frequency of in-person service coordination contacts an individual needs. This ensures that an individual receives more in-person contacts, if needed based on the Service Coordination Assessment. The adopted rules implement updated agency names and citations.

The adopted rules also update a citation to the Texas Government Code in the definition of "MCO--Managed care organization." The update is related to H.B. 4611, 88th Legislature, Regular Session, 2023, effective April 1, 2025, which made certain non-substantive revisions to Subtitle I of Title 4 of the Texas Government Code, which governs HHSC, Medicaid, and other social services as part of the legislature's ongoing statutory revision program.

#### **COMMENTS**

The 31-day comment period ended June 16, 2025.

During this period, HHSC received comments regarding the proposed rules from three commenters. HHSC received comments from Lubbock Adult Day Center, UT Southwestern Medical Center, and the Texas Council of Community Centers. A summary of comments relating to the rules and HHSC's responses follows.

**Comment:** One commenter supported the implementation of H.B. 4 from the 87th Legislative Session in 2021. The commenter went on to share that approximately 15 percent of Medicaid recipients in the state live in rural areas and have limited access to health care services. This commenter feels that H.B. 4 will increase rural residents' access to health care services.

Response: HHSC appreciates the support for the rule amendment.

Comment: One commenter expressed concern about people receiving service coordination virtually or by phone when they cannot communicate over the phone, cannot understand someone virtually, have difficulty communicating in person, or have difficulty hearing or speaking effectively. Another commenter requests clarification regarding the criteria to qualify for virtual meetings for service coordination. This commenter had a concern that if the service coordinator is left to decide who qualifies, this could lead to inconsistencies in service delivery.

Response: HHSC declines to make changes to the rule in response to these comments. HHSC recognizes that audio-only or audio-visual service coordination is not appropriate for everyone. The results of the Service Coordination Assessment, reviewed with the service planning team for accuracy, assist the team in determining the most appropriate frequency of in-person visits for each person. Further, a person or their legally authorized representative (LAR) must provide consent to receive service coordination via audio-only or audio-visual communication.

Comment: One commenter critiqued the statutory requirement that local intellectual and developmental disability authorities (LIDDAs) provide case management (referenced in the Texas Health and Safety Code as "service coordination") as being wasteful and leading to recipients receiving less than a "minimum standard of care" with no accountability. The commenter went on to raise concerns related to Intellectual or Developmental Disability (IDD) waiver program providers' responsibilities.

Response: Comments related to the formation of LIDDAs or IDD waiver program provider duties that are required by statute are outside the scope of this rule project. Texas Health and Safety Code §533A.035 requires the executive commissioner to designate LIDDAs for one or more local service areas. Under Texas Health and Safety Code §533A.0355(b), the executive commissioner must adopt rules regarding the LIDDA's service coordination functions. The Intellectual or Developmental Disability Ombudsman's office can address specific complaints about IDD waiver program providers or LIDDAs. HHSC did not revise the rules in response to this comment.

Comment: Regarding the definitions for "audio-only" and "audio-visual" in §331.5, a commenter requested HHSC provide training to LIDDAs on the privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA) as stated in each definition.

Response: The comment does not require a change to the rule language and is outside the scope of this rule project. LIDDAs can consult with their privacy officers and legal departments to ensure compliance with all applicable rules in the Texas Administrative Code (TAC) requiring compliance with HIPAA.

Comment: A commenter asked how the inclusion of a nursing facility in the definition of "institution" in §331.5 interacts with service coordination provided as part of a LIDDA's responsibilities under Pre-admission Screening and Resident Review (PASRR), and asked if all contacts made in nursing facilities are treated as Habilitation Coordination. Another commenter asked how §331.7(a)(2) related to Eligibility, interacts with the provisions related to PASRR Habilitation Coordination.

Response: The inclusion in §331.5 of a nursing facility in the definition of "institution" is related to eligibility criteria in

§331.7(a)(1)(A). However, §331.7(a)(1)(E) and (a)(2) also relate to the provision of service coordination in nursing facilities. The other comments are not related to the proposed rules in Chapter 331; and therefore, are outside the scope of this rule project. The responsibilities for a LIDDA related to PASRR and habilitation coordination are located in 26 TAC Chapter 303.

Comment: Regarding the definition of "plan of services and supports," a commenter requested clarification regarding "duration" in §331.5(29)(D).

Response: To clarify, the definition for "duration" is included in this rule language at §331.5(7). Also, as stated in the Person-Directed Plan (PDP), "Service coordination is provided for the duration the person is enrolled in Home and Community-based Services (HCS) or Texas Home Living (TxHmL)."

Comment: Regarding the definition of "service coordination" in §331.5, a commenter recommended revising the rule language to ensure the emphasis is on the person's preferences, not their LAR's.

Response: HHSC agrees and revised the definition of "service coordination" in §331.5 to specify "individual, or individual and LAR."

Comment: Regarding the definition of "service coordination," a commenter requested continued dialogue with HHSC to reach an understanding of the service coordinator's responsibility to monitor health and safety risks, including in environments where the person receives certain services.

Response: HHSC is interested in continued discussions with stakeholders regarding service coordination monitoring of certain service locations.

Comment: A commenter recommends replacing "the designated LIDDA" with "a designated LIDDA" in §331.7 to allow a receiving LIDDA during a transfer to use an HHSC Service Coordination Assessment form completed by the sending LIDDA until another assessment needs to be completed.

Response: HHSC declines to make the recommended change in §331.7 in response to this comment. A receiving LIDDA may not need to complete a new HHSC Service Coordination Assessment form to determine frequency of in-person contacts. The receiving LIDDA should review the current HHSC Service Coordination Assessment form completed by the sending LIDDA to determine if the information remains accurate. In addition, a new consent form for use of audio-only or audio-visual communication will be required.

Comment: One commenter asked if service coordination is prohibited when a person is anticipated to be in an institution for a short-term stay and what section of the TAC the prohibition is located in.

Response: HHSC declines to change the rule in response to this comment. The State Plan states that the target group for service coordination includes individuals who meet the criteria and are either transitioning to a community setting from an institution during the last 180 days of a covered long-term stay or individuals who require long-term care in the community. A person experiencing a short-term stay in an institution is not eligible for service coordination.

Comment: Regarding eligibility in §331.7(a)(1)(F) related to transitioning to the community from a state hospital or other HHSC-contracted psychiatric bed, a commenter asked if HHSC intends

to include other institutional types in the eligibility criteria for service coordination.

Response: HHSC declines to revise the rule in response to this comment. HHSC has no plans to expand eligibility criteria for service coordination.

Comment: Regarding a person's desire for service coordination in §331.11(a) Designated LIDDA's Responsibilities, a commenter requested the rule language change to state, "and consents to receive service coordination."

Response: HHSC declines to revise the rule in response to this comment. Section 331.11(a) describes when and how the LIDDA should develop a plan of services and supports. Texas Health and Safety Code §593.002 provides that a LIDDA may not provide intellectual disability services to a client without the client's legally adequate consent.

Comment: Regarding crisis prevention and management in §331.11(c), one commenter asked if this was the only component of service coordination that could be provided without first being identified in the person's plan of services and supports. The commenter gave examples such as monitoring, assessment, and service planning and coordination, as outlined in the definition for service coordination.

Response: HHSC declines to revise the rule in response to this comment. Section 331.11(b) requires that service coordination be provided in accordance with the individual's plan of services and supports. The only exception to this is found in subsection (c) of the rule that allows for the crisis prevention and management component of service coordination to be provided without having first identified the need for such services in the plan of services and supports.

Comment: Regarding the requirement to use the HHSC Service Coordination Assessment form, a commenter suggests that the language in §331.11(e) and (e)(1) is saying the same thing.

Response: HHSC agrees and removed the language in §331.11(e)(1) as it is duplicative. HHSC then renumbered (e)(2) and (e)(3) as (e)(1) and (e)(2).

Comment: Regarding the completion of the Service Coordination Assessment in §331.11(e)(2), a commenter suggested that the rule language should be revised to ensure that the assessment is not completed without the involvement of the person receiving services.

Response: HHSC agrees and revised proposed §331.11(e)(2), renumbered as §331.11(e)(1), to change "with the individual or LAR when applicable" to "with the individual, or individual and LAR when applicable."

Comment: Regarding verbal consent for audio-only or audio-visual communication for service coordination encounters in §331.11(i)(2)(B), a commenter requested that the rule language include how long verbal consent is effective.

Response: HHSC agrees and added in §331.11(i)(2)(B) that verbal consent may only be effective for that encounter. Verbal or written consent must be obtained before the next encounter.

Comment: Regarding caseload size in §331.13, a commenter stated that available funding is a determining factor. This commenter pointed out that the rates for service coordination have not been revisited since their establishment on September 1, 2011, nearly 15 years ago.

Response: HHSC declines to make changes to the rules in response to this comment. Service coordination rates are outside the scope of this rule project. The rule language in §331.13 lists some factors in determining caseloads; however, "such as" means this is not an exhaustive list.

Comment: One commenter observed that the addition of "in-person contacts" in §331.13 regarding caseloads did not take virtual or phone meetings into consideration when determining service coordinators' caseloads.

Response: HHSC declines to make the requested change to the rules in response to this comment. The rule language in §331.13 lists some factors in determining caseloads; however, "such as" means this is not an exhaustive list. Therefore, contacts using audio-visual communication or audio-only communication could be taken into consideration by a LIDDA when determining caseloads.

Comment: One commenter asked how the provision at §331.15 related to Termination of Service Coordination interacts with the requirements for participation in the HCS and TxHmL waivers.

Response: This comment is outside the scope of this rule project. LIDDA responsibilities related to TxHmL and HCS are located in 26 TAC Chapter 262 and Chapter 263, respectively.

Comment: A commenter asked for clarification regarding the grandfathered language being removed from §331.17 Minimum Qualifications.

Response: HHSC would like to clarify that service coordinators hired prior to 1999 are grandfathered into the current minimum qualifications. As stated in §331.7(d), an employee hired to provide service coordination prior to October 16, 2022, is subject to the rules in effect at the time the employee was hired.

Comment: One commenter requests that the word "directly" be added to the rule language in §331.19(a)(2) to qualify that the employees who directly supervise the provision of service coordination are required to complete the listed trainings.

Response: HHSC agrees to the requested rule language change.

Comment: As proposed, §331.19(b)(1)(I) requires service coordinators to complete "additional trainings designated by HHSC." A commenter voiced a concern about this new training provision related to employee workload.

Response: HHSC declines to revise the rule language based on this comment. At times, especially during disasters or the implementation of new programs, it might be necessary for HHSC to require additional training for service coordinators to attend.

Comment: A commenter asked for the meaning of "non-introductory" relating to the requirements for person-centered planning training in §331.19(b)(2) regarding Employee Training.

Response: HHSC considers "non-introductory" to be a comprehensive person-centered planning training, not a class that simply gives a general overview of person-centered planning. The language "non-introductory" is also included in TxHmL and HCS rules in §262.701(g)(2) and §263.901(b)(2).

Comment: One commenter thanked HHSC for providing LIDDAs with the opportunity to request a six-month extension to complete person-centered planning training in §331.19(b)(2).

Response: HHSC appreciates the support for the rule amendment.

HHSC revised §331.5(20) to update a rule reference.

HHSC revised §331.11(a) to remove a space between the hyphenated word "person-centered."

HHSC revised §331.11(k) to use formatting and active voice to clarify the requirements in the rule for a LIDDA.

HHSC revised §331.19(b)(1) and (2) to replace "service coordinator's" with "employee's." The revisions clarify that a service coordinator's direct supervisors also need to complete the person-centered trainings by their date of hire.

#### STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Government Code §532.0051, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; Texas Government Code §548.0001, which requires that HHSC ensure that Medicaid recipients and individuals receiving benefits under a public benefits program have the option to receive services as telemedicine medical services, telehealth services, or otherwise using telecommunications or information technology; Texas Human Resources Code §32.021, which provides that HHSC will adopt necessary rules for the proper and efficient administration of the Medicaid program; and Texas Health and Safety Code §533A.0355(a), which provides that the executive commissioner of HHSC shall adopt rules establishing the roles and responsibilities of LIDDAs.

#### §331.5. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Actively involved person--For an individual who lacks the ability to provide legally adequate consent and who does not have an LAR, a person whose significant and ongoing involvement with the individual is determined by the individual's designated LIDDA to be supportive of the individual based on the person's:

- (A) observed interactions with the individual;
- (B) knowledge of and sensitivity to the individual's preferences, values, and beliefs;
- (C) availability to the individual for assistance or support; and
- (D) advocacy for the individual's preferences, values, and beliefs.

(2) Audio-only--A synchronous interactive, two-way audio communication that uses only sound and meets the privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA). Audio-only includes the use of telephonic communication. Audio-only does not include audio-visual or in-person communication.

(3) Audio-visual--A synchronous interactive, two-way audio and video communication that conforms to privacy requirements under HIPAA. Audio-visual does not include audio-only or in-person communication.

(4) CFC services--Community First Choice services. State plan services described in 1 TAC Chapter 354, Subchapter A, Division 27 (relating to Community First Choice).

(5) Comprehensive encounter (Encounter Type A)--Contact with an individual receiving services as defined in 1 TAC §355.746

(relating to Reimbursement Methodology for Mental Retardation Service Coordination) and including comprehensive encounters funded by general revenue.

(6) Designated LIDDA--As identified in the HHSC data system, the LIDDA responsible for assisting an individual and LAR or actively involved person to access services and supports.

(7) Duration--The specified period of time during which service coordination is provided to an individual.

(8) Frequency--The minimum number of times during a specified period that an individual is to be contacted by a service coordinator in person based on the individual's need for contacts as determined by person-centered planning.

(9) Follow-up encounter (Encounter Type B)--Contact with the individual receiving services as defined in 1 TAC §355.746 (relating to Reimbursement Methodology for Mental Retardation Service Coordination) and including follow-up encounters funded by general revenue.

(10) General revenue--Funds appropriated by the Texas Legislature for use by HHSC.

(11) HCS Program--The Home and Community-based Services Program. A program operated by HHSC as authorized by the Centers for Medicare & Medicaid Services in accordance with §1915(c) of the Social Security Act.

(12) HHSC--The Texas Health and Human Services Commission.

(13) ICF/IID--Intermediate care facility for individuals with an intellectual disability or related conditions. An ICF/IID is a facility in which ICF/IID Program services are provided.

(14) ICF/IID level-of-care--A level-of-care described in §261.238 of this title (relating to ICF/MR Level of Care I Criteria) or §261.239 of this title (relating to ICF/MR Level of Care VIII Criteria).

(15) ICF/IID Program--A program operated by HHSC that provides Medicaid-funded residential services to individuals with an intellectual disability or related conditions, as described in §1905(d) of the Social Security Act.

(16) ICF/MR--ICF/IID.

(17) In-person (or in person)--Within the physical presence of another person. In-person or in person does not include audio-visual or audio-only communication.

(18) Individual--A person who is or is believed to be a member of the LIDDA priority population.

(19) Institution--One of the following:

- (A) an ICF/IID;
- (B) a nursing facility licensed or subject to being licensed in accordance with THSC Chapter 242;
- (C) an assisted living facility licensed or subject to being licensed in accordance with THSC Chapter 247;
- (D) a child-care operation subject to regulation by HHSC as a general residential operation under Texas Human Resources Code Chapter 42;
- (E) a hospital;
- (F) an inpatient chemical dependency treatment facility;
- (G) a mental health facility;

(H) a facility operated by the Texas Workforce Commission; or

(I) a prison.

(20) Institution for mental diseases--As defined in §273.3 of this title (relating to Definitions), a hospital of more than 16 beds that is primarily engaged in providing psychiatric diagnosis, treatment, and care of individuals with mental diseases, including medical care, nursing care, and related services.

(21) Intellectual disability--Consistent with THSC §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(22) LAR--Legally authorized representative. A person authorized by law to act on behalf of an individual with regard to a matter described in this chapter, and who may be a parent, guardian, or managing conservator of a child; or the guardian of an adult.

(23) LIDDA--Local intellectual and developmental disability authority. An entity designated by the executive commissioner of HHSC in accordance with THSC §533A.035.

(24) LIDDA priority population--A population as defined in §304.102 of this title (relating to Definitions).

(25) Local service area--A geographic area composed of one or more Texas counties defining the population that may receive services from a LIDDA.

(26) MCO--Managed care organization. This term has the meaning set forth in Texas Government Code §543A.0001.

(27) Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(28) Person-centered planning--A philosophy and planning process that empowers an individual and, on the individual's behalf, an LAR or actively involved person, to direct the development of a plan of services and supports.

(29) Plan of services and supports--A written plan that:

(A) describes the desired outcomes identified by an individual, or an LAR or actively involved person on behalf of the individual;

(B) describes the services and supports to be provided to the individual, including service coordination;

(C) identifies the frequency of in-person contacts to be provided to the individual, in accordance with §331.11(h) of this chapter (relating to Designated LIDDA's Responsibilities); and

(D) identifies the duration of service coordination to be provided to the individual.

(30) Related condition--Consistent with 42 CFR §435.1010, a severe and chronic disability that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to an intellectual disability because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of people with intellectual disabilities, and

requires treatment or services similar to those required for people with intellectual disabilities;

(B) is manifested before the person reaches 22 years of age;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(31) Relative--A person related to the individual within the fourth degree of consanguinity or within the second degree of affinity.

(32) Service coordination--Through both comprehensive and follow-up encounters, service coordination consists of assistance in accessing medical, social, educational, and other appropriate services and supports that will help an individual achieve a quality of life and community participation acceptable to the individual, or individual and LAR as follows:

(A) crisis prevention and management--linking and assisting the individual and LAR or actively involved person to secure services and supports that will enable them to prevent or manage a crisis;

(B) monitoring--ensuring that the individual receives needed services, evaluating the effectiveness and adequacy of services, and determining if identified outcomes are meeting the individual's needs and desires as indicated by the individual and LAR or actively involved person;

(C) assessment--identifying the individual's needs and the services and supports that address those needs as they relate to the nature of the individual's presenting problem and disability; and

(D) service planning and coordination--identifying, arranging, advocating, collaborating with other agencies, and linking for the delivery of outcome-focused services and supports that address the individual's needs and desires as indicated by the individual and LAR or actively involved person.

(33) State hospital--Consistent with THSC §552.0011, a hospital operated by HHSC primarily to provide inpatient care and treatment for individuals with mental illness.

(34) State supported living center--A state-supported and structured residential facility that is an ICF/IID operated by HHSC to provide persons with an intellectual disability a variety of services, including medical treatment, specialized therapy, and training in the acquisition of personal, social, and vocational skills, but does not include a community-based facility owned by HHSC.

(35) Subaverage general intellectual functioning--Consistent with THSC §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(36) TAC--Texas Administrative Code. A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code Chapter 2002, Subchapter C.

(37) THSC--Texas Health and Safety Code.

(38) TxHmL Program--The Texas Home Living Program. A program operated by HHSC as authorized by the Centers for Medicare & Medicaid Services in accordance with §1915(c) of the Social Security Act.

§331.11. *Designated LIDDA's Responsibilities.*

(a) If a LIDDA determines an individual is eligible for and desires service coordination, the LIDDA must develop a plan of services and supports for the individual using person-centered planning that is consistent with the HHSC *Person-Centered Planning Guidelines*.

(1) For the TxHmL and HCS Programs, the person-directed plan (PDP), as defined in §262.3 and §263.3 of this title (relating to Definitions), respectively, qualifies as a plan of services and supports.

(2) For an individual receiving CFC services through an MCO, a completed HHSC Community First Choice Assessment form qualifies as a plan of services and supports.

(b) A LIDDA must ensure that service coordination:

(1) is provided to an individual in accordance with the individual's plan of services and supports; and

(2) is not provided by an employee who is a relative of the individual or who has the same residence as the individual.

(c) A LIDDA may provide crisis prevention and management to an individual without having first identified the need for such services in the individual's plan of services and supports.

(d) A LIDDA must complete the HHSC Service Coordination Assessment form:

(1) at intake to determine an individual's eligibility;

(2) when the individual's needs change and the frequency of in-person contact in the individual's plan of services and supports needs to be revised; and

(3) at least annually.

(e) The HHSC Service Coordination Assessment must:

(1) be completed by the service coordinator with the individual, or individual and LAR when applicable; and

(2) identify the frequency of in-person service coordination contact.

(f) A LIDDA must ensure that a service coordinator revises an individual's plan of services and supports:

(1) if:

(A) the individual's needs change; or

(B) the individual, LAR or actively involved person, service provider, or other person provides relevant information indicating the appropriateness of revising the plan; and

(2) using person-centered planning that is consistent with the HHSC *Person-Centered Planning Guidelines*.

(g) Service coordination, during both comprehensive and follow-up encounters, must involve at least one of the four elements listed in the definition of "service coordination" in §331.5 of this chapter (relating to Definitions).

(h) A LIDDA must ensure that a service coordinator meets with an individual in person in accordance with one of the following, whichever is the most frequent:

(1) at least once every 90 days or more frequently in accordance with the HHSC Service Coordination Assessment form; or

(2) for the minimum number of in-person contacts required by:

(A) rules or other requirements of the program or services in which the individual is enrolled; or

(B) a contract between HHSC and the LIDDA.

(i) A service coordinator may meet with an individual via audio-only or audio-visual communication for a comprehensive encounter:

(1) in a month when minimum in-person contact in accordance with subsection (h) of this section is not required; and

(2) if, before the service coordinator conducts the meeting using audio-only or audio-visual communication, the service coordinator obtains:

(A) the written consent of the individual or LAR, which may only be effective for up to a year; or

(B) the individual's or LAR's verbal consent, which may only be effective for that encounter, and documents the verbal consent in the individual's record.

(j) If a service coordinator does not obtain an individual's or LAR's written or verbal consent required by subsection (i)(2)(A) or (B) of this section respectively, the service coordinator must:

(1) document the individual's or LAR's refusal to receive a comprehensive encounter via audio-only or audio-visual communication in the individual's record; and

(2) conduct the comprehensive encounter in person.

(k) If a service coordinator identifies a concern with implementation of the plan of services and supports, the LIDDA must:

(1) communicate the concern to the entity providing the services and supports; and

(2) ensure the entity makes attempts to resolve the concern.

(l) In addition to the requirements in this chapter, a LIDDA must ensure service coordination is provided to individuals enrolled in the TxHmL Program in accordance with:

(1) Chapter 262 of this title (relating to Texas Home Living (TxHmL) Program and Community First Choice (CFC)); and

(2) Chapter 264 of this title (relating to Consumer Directed Services Option)).

(m) In addition to the requirements in this chapter, a LIDDA must ensure service coordination is provided to individuals enrolled in the HCS Program in accordance with:

(1) Chapter 263 of this title (relating to Home and Community-based Services (HCS) Program and Community First Choice (CFC)); and

(2) Chapter 264 of this title.

§331.19. *Employee Training.*

(a) A LIDDA must ensure that the following employees complete the training as described in subsection (b) of this section:

(1) an employee who provides service coordination; and

(2) an employee who directly supervises or oversees the provision of service coordination.



(b) A LIDDA employee described in subsection (a) of this section must:

(1) within the first 90 days of the employee's date of hire, complete training that addresses:

(A) appropriate LIDDA policies, procedures, and standards;

(B) the LIDDA's performance contract requirements regarding service coordination;

(C) plan of services and supports development and implementation;

(D) person-centered planning consistent with the *HHSC Person-Centered Planning Guidelines*;

(E) permanency planning;

(F) crisis prevention and management, monitoring, assessment, and service planning and coordination;

(G) community support services, including Medicaid state plan services such as CFC services;

(H) advocacy for individuals; and

(I) additional trainings designated by HHSC; and

(2) within the first six months of the employee's date of hire, complete a comprehensive non-introductory person-centered service planning training approved by HHSC, unless HHSC grants an extension of the six-month timeframe.

(c) A LIDDA must document the training completed in accordance with this section in the personnel record of each employee providing, supervising, or overseeing service coordination.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 29, 2025.

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Karen Ray

Chief Counsel

Health and Human Services Commission

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For further information, please call: (512) 438-5609



## **TITLE 30. ENVIRONMENTAL QUALITY**

### **PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

#### **CHAPTER 114. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES**

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to 30 Texas Administrative Code (TAC) §§114.1, 114.2, 114.7, 114.50, 114.51, 114.53, 114.60, 114.64, 114.66, 114.72, 114.80, 114.81, 114.82, 114.84, and 114.87.

All amended sections are adopted *without changes* to the proposed text as published in the May 2, 2025, issue of the *Texas Register* (50 TexReg 2670) and, therefore, will not be republished.

Amended §§114.1, 114.2, 114.50, 114.51, 114.53, 114.80, 114.81, 114.82, 114.84, and 114.87 will be submitted to the U.S. Environmental Protection Agency (EPA) as a revision to the State Implementation Plan (SIP).

#### **Background and Summary of the Factual Basis for the Adopted Rules**

Eighteen counties in Texas are subject to 30 TAC Chapter 114 inspection and maintenance (I/M) rules and the I/M SIP: Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties in the Dallas-Fort Worth (DFW) area; Brazoria, Fort Bend, Galveston, Harris, and Montgomery Counties in the Houston-Galveston-Brazoria (HGB) area; Travis and Williamson Counties in the Austin-Round Rock (ARR) area; and El Paso County. The commission adopted revisions to Chapter 114 and the I/M SIP on November 29, 2023, to implement an I/M program in Bexar County no later than November 1, 2026 (Project Nos. 2022-026-114-AI and 2022-027-SIP-NR).

The I/M rules require the commission to implement the I/M program in conjunction with the Texas Department of Public Safety (DPS) and require vehicles registered in I/M counties to pass an emissions inspection at the time of their annual safety inspection.

The 88th Texas Legislature, 2023, Regular Session, passed two bills that impact the Texas I/M program and require rulemaking and a revision to the I/M SIP. House Bill (HB) 3297 eliminated the mandatory annual vehicle safety inspection program for non-commercial vehicles, effective January 1, 2025. A rulemaking and SIP revision are required to remove references and requirements related to the state's safety inspection program and to revise several provisions in the SIP that are outlined in the bill. Senate Bill (SB) 2102 extends the initial registration and inspection period for rental vehicles from two years to three years. A rulemaking and SIP revision are required to allow one additional year of exemption from emissions inspections for rental vehicles.

The rulemaking provides for an overall clean-up of the rule language to remove outdated program-related definitions, references, and requirements. This clean-up is a result of the 2023 Quadrennial Rule Review required for Chapter 114. The clean-up process also includes revisions to the rule and SIP to remove a provision of the I/M rule related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency that has not been approved as part of the Texas SIP by EPA.

Demonstrating Noninterference under Federal Clean Air Act (FCAA), §110(l)

Under FCAA, §110(l), EPA cannot approve a SIP revision if it would interfere with attainment of the National Ambient Air Quality Standards (NAAQS), reasonable further progress toward attainment, or any other applicable requirement of the FCAA. The commission provides the following information to demonstrate why the adopted changes to the I/M program rules in Chapter 114 will not negatively impact the status of the state's progress towards attainment, interfere with control measures, or prevent reasonable further progress toward attainment of the ozone or carbon monoxide (CO) NAAQS.

The adopted amendments revise 30 TAC Chapter 114, Subchapters A and C to implement HB 3297, as discussed elsewhere in this preamble, and provide for an overall clean-up of the rule language to remove outdated program-related definitions, references, and requirements. The requirement related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency, which is being removed from the I/M rule, has not been approved by EPA as part of the Texas SIP. These amendments do not affect EPA-approved I/M program requirements; therefore, the rule-making adoption will not negatively impact the state's progress towards attainment of the ozone NAAQS or maintenance of the CO NAAQS.

The adopted amendments to Chapter 114 also modify Subchapter C to implement SB 2102, extending the initial registration and inspection period for rental vehicles to three years. TCEQ and DPS have implemented an I/M program that meets or exceeds the low-enhanced I/M performance standard required by 40 Code of Federal Regulations (CFR), Part 51. To implement the new requirements for Texas I/M programs specified in SB 2102, TCEQ is adopting updates to the vehicle emissions testing programs for the DFW area, HGB area, ARR area, Bexar County, and El Paso County. The updated I/M program's implementation year is anticipated to be 2026. Evaluating whether an updated I/M program meets EPA's enhanced performance standard requires demonstrating that the existing program emission rates for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) do not exceed the benchmark program's emission rates. The benchmark program's emission rates include a 0.02 grams per mile buffer for each pollutant. Using the requirements in EPA guidance document, *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* (EPA-420-B-22-034, October 2022), TCEQ performed the required performance standard modeling (PSM) analysis of the five program areas, as detailed in the accompanying HB 3297 and SB 2102 Implementation I/M SIP Revision (Project Number 2025-013-SIP-NR). The analysis demonstrates that the updated DFW area, HGB area, ARR area, Bexar County, and El Paso County I/M program emission rates do not exceed the performance standard benchmark emission rates for all counties required to operate an I/M program within these areas. Therefore, the I/M program performance requirement is met for the updated I/M program in all areas. Additionally, the PSM analysis indicates that ozone precursor emission impacts due to the adopted I/M program updates will be negligible and are not expected to interfere with any applicable FCAA requirement concerning attainment and reasonable further progress of the ozone NAAQS.

Data from the Texas Department of Motor Vehicles (DMV) indicate that the number of rental vehicles titled in Texas that will be exempt under the new provisions of this rule is approximately 76,000. This is 0.3% of the overall Texas fleet. Additionally, these vehicles are expected to be the newest model year vehicles and, as such, are expected to meet the required emissions standards even though they are not tested since newer vehicles typically pass emissions inspections at higher rates than older vehicles. This adopted revision due to the passage of SB 2102 will not negatively impact the state's progress towards attainment of the 2008 and 2015 eight-hour ozone NAAQS. While PSM is not required by EPA for CO maintenance areas such as El Paso County, this small percentage of the fleet is not expected to negatively impact maintenance of the CO NAAQS in El Paso County, which is under an approved limited maintenance plan.

## Section by Section Discussion

The adopted amendments revise the I/M program rules to provide for implementation of HB 3297 and SB 2102 and remove obsolete definitions. Adopted amendments also remove a state I/M requirement from the rule and state-adopted SIP to be consistent with the EPA-approved federally enforceable Texas SIP. Amendments to clean up Chapter 114 rules result from the 2023 Quadrennial Rule Review process.

The commission also adopts non-substantive changes to update the rules in accordance with current *Texas Register* style and format requirements, improve readability, establish consistency in the rules, and conform to the standards in the Texas Legislative Council Drafting Manual, September 2020. These non-substantive changes are not intended to alter the existing rule requirements in any way and may not be specifically discussed in this preamble.

### Subchapter A: Definitions

#### §114.1. Definitions

The rulemaking adoption removes obsolete definitions in §114.1 that have been affirmed by staff as no longer necessary and revises an additional definition. The obsolete definitions were associated with outdated references to safety inspections and first vehicle registration that are not used in or applicable to current rules in Chapter 114 as adopted. The definitions removed in the rulemaking adoption are: first safety inspection certificate and first vehicle registration. The definition for single sticker transition date, which was needed temporarily to implement HB 2305, 83rd Texas Legislature, 2013, Regular Session, is not being removed in this rulemaking adoption because it is referenced in Chapter 114, Subchapter B, which is not open for this rulemaking. The commission may consider removing this outdated definition in a future rulemaking. The adopted revision to the definition for vehicle registration insignia sticker removes the reference to the single sticker transition date as that date has passed and the reference is no longer necessary. The remaining definitions are renumbered as appropriate.

#### §114.2. Inspection and Maintenance Definitions

The rulemaking adoption removes obsolete definitions in §114.2 that have been affirmed by staff as no longer necessary, revises additional definitions, and adds one definition. The obsolete definitions were associated with outdated test sequences and definitions that are not used in or applicable to current rules in Chapter 114 as adopted. The definitions removed in the rulemaking adoption are: acceleration simulation mode (ASM-2) test, consumer price index, controller area network (CAN), low-volume emissions inspection station, two-speed idle (TSI) inspection and maintenance test, and uncommon part. The adopted revision to the definition for testing cycle removes the reference to the single sticker transition date as previously defined.

The program area definitions in existing §114.2(10) are renumbered to §114.2(6) and revised to combine the DFW program area definition in existing subparagraph (A) with the extended DFW program area definition in existing subparagraph (D) into a revised subparagraph (A). Existing subparagraph (D) is removed, and existing subparagraph (E) is renumbered as (D). These adopted amendments to the definition for program area do not change the meaning of the I/M program areas but bring together all the DFW area counties under one subparagraph for clarity.

The adopted revisions add a definition for rental vehicle in §114.2(7) to accommodate adopted rule amendments associated with implementation of SB 2102. The remaining definitions are renumbered as appropriate.

***§114.7. Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions***

The adopted revisions to §114.7 update the definitions of automobile dealership, proof of transfer, and replacement vehicle. The statutory reference for automobile dealership is not valid; therefore, the adopted revision replaces that term with dealer to match the updated statutory reference in Texas Transportation Code (TTC), §503.001(4). Adopted revisions also modify the definition to reference a person instead of a business, also to match the updated statutory reference. The adopted revision to proof of transfer updates the term automobile dealer to dealer. The adopted revision to replacement vehicle modifies the definition by removing the requirement that a vehicle have a passing safety inspection to be eligible as a replacement vehicle since the state's mandatory annual vehicle safety inspection program for noncommercial vehicles was eliminated on January 1, 2025. The definitions are renumbered as appropriate.

***Subchapter C: Vehicle Inspection and Maintenance; Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program; and Early Action Compact Counties***

***§114.50. Vehicle Emissions Inspection Requirements***

The adopted revisions to §114.50 add an emissions inspection exception for rental vehicles, combine I/M program applicability subsections, simplify language concerning test procedures, remove references to the extended DFW program area, remove obsolete references to safety inspections, remove references to the single sticker transition date, and remove a provision that is not part of the EPA-approved I/M SIP for Texas.

Subsection (a) is revised to add an exception for rental vehicles under emissions inspection applicability provisions that extends their initial inspection period to three years. This amendment is adopted as a result of the passage of SB 2102. Due to passage of HB 3297, which eliminated the mandatory annual vehicle safety inspection program for noncommercial vehicles, the amendments to subsection (a) include replacing a reference to safety inspection facilities with a reference to inspection facilities.

The adopted revisions amend §114.50(a)(1) - (4) to combine the I/M program test procedure and applicability provisions for the DFW program area, the HGB program area, and El Paso County under adopted §114.50(a)(1) for clarity and readability, while also removing outdated references to program areas and other outdated references noted further below. The adopted revisions remove subsection (a)(2), (3), and (4) and renumber the remaining paragraphs. The adopted revisions remove subsection (a)(1)(A), (B), and (C) as the ASM-2 test is no longer used and only the on-board diagnostic (OBD) test applies now. The adopted revisions remove the references to the extended DFW program area in subsections (a)(2) and (b)(1), (3), and (6) as that definition is no longer representative of the DFW program area. The adopted revisions remove references to safety inspections in subsections (b)(1)(A) and (d)(1) that are no longer applicable to current rules in Chapter 114 due to the passage of HB 3297. The adopted revisions remove the references to the single sticker transition date in subsections (b)(1)(B) and (d)(2) as that date has passed and the references are no longer necessary. Existing §114.50(a)(5) is renumbered as §114.50(a)(2).

This rulemaking adoption also removes §114.50(b)(2) related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency. The provision was first adopted in a 1999 rulemaking, and EPA has not approved this requirement as part of the SIP. EPA did not include the provision in its final approval, published on November 14, 2001 (66 *Federal Register* (FR) 57261). EPA indicated in an April 15, 2014, (79 FR 21179) action that it "will not approve or disapprove the specific requirements of 30 TAC §114.50(b)(2)" because "EPA did not require the state to implement or adopt this reporting requirement dealing with federal installation within I/M areas at the time of program approval." Thus, removing the provision aligns the I/M program rules in Subchapter C, Division 1 with federal program requirements and the I/M rules in the EPA-approved SIP. Since existing subsection (b)(2) is removed, subsequent paragraphs under subsection (b) are renumbered.

***§114.51. Equipment Evaluation Procedures for Vehicle Exhaust Gas Analyzers***

The adopted revision to §114.51 updates the hyperlink location for the most recent version of the "Specifications for Vehicle Exhaust Gas Analyzer Systems for Use in the Texas Vehicle Emissions Testing Program."

***§114.53. Inspection and Maintenance Fees***

The adopted revisions to §114.53 combine I/M program fee requirements for several areas, add abbreviations, remove reference to the single sticker transition date, remove reference to the extended DFW program area, and remove language concerning fees associated with the outdated ASM-2 test.

As with adopted amendments to §114.50, provisions in §114.53(a)(1) - (3) are revised to combine I/M program fee provisions for the DFW program area, the HGB program area, and El Paso County under a revised §114.53(a)(1). Existing paragraphs (2) and (3) are removed, and existing §114.53(a)(4) are renumbered as adopted §114.53(a)(2). The adopted revisions to §114.53(a)(4) update the reference from §114.50(a)(5)(A) to §114.50(a)(2)(A) as it is renumbered.

The adopted revisions to §114.53(d) remove reference to the single sticker transition date as that date has passed and the reference is no longer necessary. Reference to the extended DFW program area in §114.53(d)(2) is removed as that definition is no longer necessary for describing the DFW area counties subject to I/M requirements, and language concerning the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program (LIRAP) fees in §114.53(d)(2)(A) and (B) and §114.53(d)(3)(A) and (B) is revised to remove references to the outdated ASM-2 test and associated LIRAP fee for that test.

***§114.60. Applicability for LIRAP***

The adopted revisions to §114.60 update references to statute that were amended by SB 1303, 82nd Texas Legislature, 2011, Regular Session. SB 1303 amended THSC, §382.209(c)(1) by updating a reference of TTC, §§502.274 or 502.275 to TTC, §§504.501 or 504.502. SB 1303 was a general code update bill prepared by the Texas Legislative Council to make non-substantive amendments to enacted codes. TTC, §§502.274 and 502.275 had been removed from statute when HB 2971 repealed TTC, Chapter 502, Subchapter F during the 78th Texas Legislature, 2003, Regular Session. The adopted revisions change the reference to TTC, §502.274 in §114.60(c)(4) to TTC, §504.501, add "custom vehicle or street rod" to match the statute, and remove "as defined by" since the new reference is not in a defini-

tions section in the statute. The adopted revisions change the reference to TTC, §502.275 in §114.60(c)(5) to TTC, §504.502 and remove "as defined by" since the new reference is not a definitions section in the statute.

#### **§114.64. LIRAP Requirements**

The adopted revisions to §114.64 remove obsolete requirements related to safety inspections and the ASM-2 test, incorporate changes caused by renumbering, and update a term to match changes made to definitions. The adopted revisions to §114.64(b)(4) remove a requirement made obsolete by the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297. Subsequent paragraphs under subsection (b) are renumbered. The adopted revisions to §114.64(c)(1) incorporate changes in §114.64(c)(1)(A) caused by renumbering in subsection (b), remove a requirement in §114.64(c)(1)(B) made obsolete by the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297 and by implementation of the state's single sticker registration system, and remove redundant language in §114.64(c)(1)(C) that already appears in existing §114.64(b)(6). The adopted revisions to §114.64(c)(2) remove an obsolete requirement related to the outdated ASM-2 test and renumber subsequent paragraphs under subsection (c). The adopted revisions to §114.64(e) remove a requirement made obsolete by the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297. The adopted revisions to §114.64(f) and (f)(1) change the term "automobile dealership(s)" to "dealer(s)" to match the update adopted in §114.7.

#### **§114.66. Disposition of Retired Vehicle**

The adopted revisions in §114.66(d) change the term "automobile dealer" to "dealer" to match the update adopted in §114.7.

#### **§114.72. Local Advisory Panels**

The adopted revisions to §114.72 update obsolete references to statute, update a term to match changes made to definitions, and remove the provision that local advisory panels may consist of representatives from safety inspection facilities. The adopted revisions to §114.72(a)(4) update references to statute that were amended by SB 1303, 82nd Texas Legislature, 2011, Regular Session to match the updates made in §114.60. The adopted revisions change the term "automobile dealerships" to "dealers" in §114.72(c)(1) to match the update adopted in §114.7. *Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions.* The adopted revisions remove the provision in §114.72(c)(3) that local advisory panels may consist of representatives from safety inspection facilities due to the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles as a result of the passage of HB 3297 and instead allow that they may consist of representatives from emissions inspection facilities.

#### **§114.80. Applicability**

The adopted revisions to §114.80 add an emissions inspection exception for rental vehicles and remove obsolete references to safety inspections. The adopted revisions to §114.80(c) add an exception for rental vehicles under emissions inspection applicability provisions that extends their initial inspection period to three years. This amendment is adopted as a result of the passage of SB 2102. Due to passage of HB 3297, which eliminated the mandatory annual vehicle safety inspection program for non-

commercial vehicles, the amendments to §114.80(c) include replacing references to safety inspection and safety inspection facilities with references to emissions inspection and inspection facilities.

#### **§114.81. Vehicle Emissions Inspection Requirements**

The adopted revisions in §114.81 remove the references to the TSI test for pre-1996 vehicles that are no longer applicable in the program. The adopted revisions remove paragraph (2) and revise paragraphs (1) and (3) as the TSI test is no longer used and only the OBD test applies. The paragraphs in the section are renumbered as appropriate.

#### **§114.82. Control Requirements**

The adopted revisions in §114.82 remove references to the safety inspection, the single sticker transition date, 1996 and newer model year vehicles, and the Texas Motor Vehicle Commission Code, and remove a subsection that corresponds to a section not approved by EPA as part of the SIP. Section 114.82(a)(1) is removed since it only pertains to requirements prior to the single sticker transition date as that date has passed and those requirements are no longer necessary. The adopted revisions to §114.82(a)(2) remove the reference to the single sticker transition date and safety inspection requirements due to the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles that resulted from the passage of HB 3297. Paragraphs of §114.82(a) are renumbered as appropriate.

The adopted rulemaking also remove §114.82(b) as it corresponds to §114.50(b)(2), related to vehicles operated by any federal government agency employee under the jurisdiction of a federal government agency, which EPA has not approved as part of the SIP. Removing the provision aligns the I/M program rules in Subchapter C, Division 1 with federal program requirements and the I/M rules in the EPA-approved SIP. Since existing subsection (b) is removed, subsequent subsections §114.82(c) through (h) under are renumbered as §114.82(b) through (g). The adopted revisions to §114.82(c) change the term "dealer-ship(s)" to "dealer(s)" to match the update adopted in §114.7. *Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program Definitions.* The adopted revisions to §114.82(g) remove the reference to the Texas Motor Vehicle Commission Code as it is no longer applicable and remove the reference to 1996 and newer model year vehicles, as this age range of vehicles no longer needs to be specified.

#### **§114.84. Prohibitions**

The adopted revisions in §114.84 remove obsolete references to safety inspections and the single sticker transition date that are no longer applicable to current rules in Chapter 114. The adopted revision to §114.84(a) removes the reference to the annual safety inspection due to the elimination of the mandatory annual vehicle safety inspection program for noncommercial vehicles that resulted from the passage of HB 3297. The adopted revision to §114.84(b) removes an obsolete reference to the single sticker transition date that is no longer applicable as that date has passed and the reference is no longer necessary.

#### **§114.87. Inspection and Maintenance Fees**

The adopted revisions in §114.87 remove obsolete references to the TSI test and the single sticker transition date and update the language used to refer to the emissions test. Subsections (a) and (d) are revised to remove references to the single sticker transition date that are no longer applicable as that date

has passed and the references are no longer necessary. The adopted revisions to §114.87(a) remove reference to the TSI test as it is no longer used. The adopted revisions to §114.87(a) also change on-board diagnostic test to emissions test to match language used to refer to the test in §114.53(a).

#### Final Regulatory Impact Analysis

The commission reviewed the rulemaking adoption considering the regulatory impact analysis requirements of Texas Government Code (Tex. Gov't Code), §2001.0225, and determined that the rulemaking adoption does not meet the definition of a "Major environmental rule" as defined in that statute, and in addition, if it did meet the definition, would not be subject to the requirement to prepare a regulatory impact analysis. A "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Additionally, the rulemaking adoption does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Tex. Gov't Code Ann., §2001.0225(a). Tex. Gov't Code Ann., §2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The adopted rulemaking's purpose is to remove references and requirements related to the state's safety inspection program due to the passage of HB 3297 and revise several provisions in the SIP that are outlined in the bill; and allow one additional year of exemption from emissions inspections for rental vehicles due to the passage of SB 2102 to comply with federal requirements for the implementation of control strategies necessary to attain and maintain the NAAQS for ozone or CO mandated by 42 United States Code (U.S.C.) §7410, FCAA, §110. The requirement to implement and enforce I/M programs is specifically required for certain nonattainment areas by the FCAA, and the adopted revisions to 30 TAC Chapter 114 will be used as a control strategy for demonstrating attainment of the ozone or CO NAAQS in the specific areas designated as nonattainment in Texas, as discussed elsewhere in this preamble.

The rulemaking adoption implements requirements of the FCAA, 42 U.S.C. §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 U.S.C. §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, I/M programs are specifically required by the FCAA. The SIP must also include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to

meet the NAAQS, and when programs are specifically required, states may implement them with flexibility allowed under the statute and EPA rules. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C. §7410. States are not free to ignore the requirements of 42 U.S.C. §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

If a state does not comply with its obligations under 42 U.S.C. §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 U.S.C. §7410(m) or mandatory sanctions under 42 U.S.C. §7509, FCAA, §179; as well as the imposition of a federal implementation plan (FIP) under 42 U.S.C. §7410, FCAA, §110(c).

As discussed earlier in this preamble, states are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. As discussed in the FISCAL NOTE portion of this preamble, the adopted rules are not anticipated to add any significant additional costs to affected individuals or businesses beyond what is necessary to attain the ozone or CO NAAQS or comply with the specific requirements for I/M programs on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The requirement to provide a fiscal analysis of regulations in the Tex. Gov't Code was amended by SB 633 during the 75th legislative session. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated that the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted that the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS, but I/M programs are specifically required by the FCAA; thus, states must develop programs for each area contributing to nonattainment to help ensure that those areas will meet the required attainment deadlines and that comply with EPA requirements for I/M programs. Because of the ongoing need to meet federal requirements, the commission routinely proposes and adopts rules incorporating or designed to satisfy specific federal requirements. The legislature is presumed to understand this federal scheme. If each rule adopted by the commission to meet a federal requirement was considered to be a major environmental rule that exceeds federal law, then each of

those rules would require the full regulatory impact analysis (RIA) contemplated by SB 633. Requiring a full RIA for all federally required rules is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, then the intent of SB 633 is presumed to only to require the full RIA for rules that are extraordinary in nature. While the adopted rules may have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA and creates no additional impacts since the adopted rules do not impose burdens greater than required to demonstrate attainment of the ozone or CO NAAQS and comply with the requirements for I/M programs, as discussed elsewhere in this preamble.

For these reasons, the adopted rules fall under the exception in Tex. Gov't Code, §2001.0225(a) because they are required by, and do not exceed, federal law. The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Tex. Gov't Code but left this provision substantially unamended. It is presumed that "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). Cf. *Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978).) The commission's interpretation of the RIA requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Tex. Gov't Code, §2001.035). The legislature specifically identified Tex. Gov't Code, §2001.0225 as subject to this standard.

As discussed in this analysis and elsewhere in this preamble, the commission has substantially complied with the requirements of Tex. Gov't Code, §2001.0225. The adopted rules implement the requirements of the FCAA, as discussed in this analysis and elsewhere in this preamble. The adopted rules were determined to be necessary to attain the ozone or CO NAAQS and comply with requirements for I/M programs and will not exceed any standard set by state or federal law. These adopted rules are not an express requirement of state law. The adopted rules do not exceed a requirement of a delegation agreement or a contract between state and federal government, as the adopted rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The adopted rules were not developed solely under the general powers of the agency but are authorized by specific sections of THSC, Chapter 382 (also known as the Texas Clean Air Act), and the Texas Water Code (TWC), which are cited in the Statutory Authority section of this preamble, including THSC, §§382.011, 382.012, and 382.017. Therefore,

this rulemaking adoption action is not subject to the regulatory analysis provisions of Tex. Gov't Code, §2001.0225(b).

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received.

#### Takings Impact Assessment

Under Tex. Gov't Code, §2007.002(5), taking means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or §17 or §19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action; and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The commission completed a takings impact analysis for the rulemaking adoption action under the Tex. Gov't Code, Chapter 2007. The primary purpose of this rulemaking adoption action, as discussed elsewhere in this preamble, is to meet federal requirements for the implementation of I/M programs and control strategies necessary to attain and maintain the NAAQS for ozone or CO mandated by 42 U.S.C. §7410, FCAA, §110. Therefore, Chapter 2007 does not apply to this rulemaking adoption because it is an action reasonably taken to fulfill an obligation mandated by federal law, as provided by Tex. Gov't Code, §2007.003(b)(4).

As discussed elsewhere in this preamble, the rulemaking adoption implements requirements of FCAA, 42 U.S.C. §7410, which requires states to adopt a SIP that provides for the implementation, maintenance, and enforcement of the NAAQS in each air quality control region of the state. While 42 U.S.C. §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, I/M programs are specifically required by the FCAA. The SIP must include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of the FCAA. The provisions of the FCAA recognize that states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public, to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 U.S.C. §7410. States are not free to ignore the requirements of 42 U.S.C. §7410 and must develop programs to assure that their contributions to nonattainment areas are reduced so that these areas can be brought into attainment on the schedule prescribed by the FCAA.

States are required to adopt SIPs with enforceable emission limitations and other control measures, means, or techniques, as

well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the FCAA. If a state does not comply with its obligations under 42 U.S.C. §7410, FCAA, §110 to submit SIPs, states are subject to discretionary sanctions under 42 U.S.C. §7410(m) or mandatory sanctions under 42 U.S.C. §7509, FCAA, §179; as well as the imposition of a FIP under 42 U.S.C. §7410, FCAA, §110(c).

In addition, the commission's assessment indicates that Tex. Gov't Code, Chapter 2007 does not apply to these adopted rules because this action is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that it does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Tex. Gov't Code, §2007.003(b)(13). The rules adoption will fulfill the FCAA requirement for states to create plans including control strategies to attain and maintain the NAAQS, as discussed elsewhere in this preamble. The rules adoption will assist in achieving the timely attainment of the ozone or CO NAAQS and reduced public exposure to ozone or CO. The NAAQS are promulgated by EPA in accordance with the FCAA, which requires EPA to identify and list air pollutants that "cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare" and "the presence of which in the ambient air results from numerous or diversion mobile or stationary sources," as required by 42 U.S.C. §7408. For those air pollutants listed, EPA then is required to issue air quality criteria identifying the latest scientific knowledge regarding on adverse health and welfare effects associated with the listed air pollutant, in accordance with 42 U.S.C. §7408. For each air pollutant for which air quality criteria have been issued, EPA must publish proposed primary and secondary air quality standards based on the criteria that specify a level of air quality requisite to protect the public health and welfare from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air, as required by 42 U.S.C. §7409. As discussed elsewhere in this preamble, states have the primary responsibility to adopt plans designed to attain and maintain the NAAQS.

The adopted rules will not create any additional burden on private real property beyond what is required under federal law, as the rules, if adopted by the commission and approved by EPA, will become federal law as part of the approved SIP required by 42 U.S.C. §7410, FCAA, §110. The rules adoption will not affect private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. The adoption also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the rulemaking adoption will not cause a taking under Tex. Gov't Code, Chapter 2007. For these reasons, Tex. Gov't Code, Chapter 2007 does not apply to this rulemaking adoption.

#### Consistency with the Coastal Management Program

The commission reviewed the rulemaking adoption and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §29.11(b)(2) relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

Note: §29.11(b)(2) applies only to air pollutant emissions, on-site sewage disposal systems, and underground storage tanks. Sec-

tion 29.11(b)(4) applies to all other actions. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Advisory Committee and determined that the rulemaking and SIP revision would ensure that the amendments comply with 40 CFR Part 50, National Primary and Secondary Air Quality Standards, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plan and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received.

#### Public Comment

The comment period for the proposed Chapter 114 I/M rulemaking opened on April 22, 2025, and closed on June 3, 2025. The commission held a virtual public hearing on May 29, 2025, at 2:00 p.m. TCEQ staff were present and opened the hearing for public comment on this project as well as the concurrent I/M SIP revision (Project No. 2025-013-SIP-NR). However, none of the attendees signed up to make comments on the record, therefore a transcript was not prepared. The commission received one written comment from an individual. The comment was beyond the scope of this rulemaking.

#### Response to Comment

##### *Comment*

One individual commented on the regulation of septic systems.

##### *Response*

The regulation of septic systems is beyond the scope of this rulemaking. No changes were made in response to this comment.

## SUBCHAPTER A. DEFINITIONS

### 30 TAC §§114.1, 114.2, 114.7

#### Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.1, 114.2, and 114.7 are adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §7.0002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act (TCAA).

The amendments to 30 TAC Chapter 114 are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of the Commission of the Commission; Rules which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M) Program, which authorizes

the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety (DPS) of the State of Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 26, 2025.

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Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-2678



## SUBCHAPTER C. VEHICLE INSPECTION AND MAINTENANCE; LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM; AND EARLY ACTION COMPACT COUNTIES

### DIVISION 1. VEHICLE INSPECTION AND MAINTENANCE

#### 30 TAC §§114.50, 114.51, 114.53

##### Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.50, 114.51, and 114.53 are adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §7.0002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act (TCAA).

The amendments to 30 TAC Chapter 114 are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC,

§382.051, concerning Permitting Authority of the Commission of the Commission; Rules which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M) Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety (DPS) of the State of Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Deputy Director, Environmental Law Division

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## DIVISION 2. LOW INCOME VEHICLE REPAIR ASSISTANCE, RETROFIT, AND ACCELERATED VEHICLE RETIREMENT PROGRAM

#### 30 TAC §§114.60, 114.64, 114.66, 114.72

##### Statutory Authority

The amendments to 30 Texas Administrative Code (TAC) §§114.60, 114.64, 114.66, and 114.72 are adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §7.0002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act (TCAA).

The amendments to 30 TAC Chapter 114 are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of the Commission



of the Commission; Rules which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M) Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety (DPS) of the State of Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Deputy Director, Environmental Law Division

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## **DIVISION 3. EARLY ACTION COMPACT COUNTIES**

### **30 TAC §§114.80 - 114.82, 114.84, 114.87**

#### **Statutory Authority**

The amendments to 30 Texas Administrative Code (TAC) §§114.80, 114.81, 114.82, 114.84, and 114.87 are adopted under the authority of Texas Water Code (TWC), §5.103, concerning Rules; TWC, §5.105, concerning General Policy, which authorize the commission to carry out its powers and duties under the TWC; TWC, §7.0002, concerning Enforcement Authority, which authorizes the commission to enforce the provisions of the Water Code and the Health and Safety Code within the commission's jurisdiction; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act (TCAA).

The amendments to 30 TAC Chapter 114 are also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.051, concerning Permitting Authority of the Commission of the Commission; Rules which authorizes the commission to

adopt rules as necessary to comply with changes in federal law or regulations applicable to permits issued under the TCAA. Additionally, the amendments to 30 TAC Chapter 114 are authorized under THSC, §382.202, concerning Vehicle Emissions Inspection and Maintenance (I/M) Program, which authorizes the commission to establish vehicle fuel content standards after January 1, 2004, as long as distribution of low emission diesel as described in the state implementation plan (SIP) is not required prior to February 1, 2005; THSC, §382.203, concerning Vehicles Subject to Program; Exemptions, which establishes which vehicles are subject to the I/M program and which are exempt from it; and THSC, §382.205, concerning Inspection Equipment and Procedures, which authorizes the commission to adopt standards and specifications for motor vehicle emissions testing equipment, recordkeeping and reporting procedures, and measurable emissions standards, as well as consult with the Department of Public Safety (DPS) of the State of Texas.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

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## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES**

#### **CHAPTER 1. STATE AUTHORITY RESPONSIBILITIES**

##### **SUBCHAPTER G. COMMUNITY CENTERS**

#### **40 TAC §§1.301 - 1.303, 1.305, 1.307 - 1.312**

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of §1.301, concerning Purpose; §1.302, concerning Application; §1.303, concerning Definitions; §1.305, concerning Process to Establish a New Community Center; §1.307, concerning Modifying a Community Center's Current Plan; §1.308, concerning Dissolution and Merger of Community Centers; §1.309, concerning Appointment of Manager or Management Team; §1.310, concerning Standards of Administration for Boards of Trustees; §1.311, concerning Civil Rights; and §1.312, concerning Fiscal Controls.

The repeal of §§1.301 - 1.303, 1.305, and 1.307 - 1.312 are adopted without changes as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2959). These rules will not be republished.

#### **BACKGROUND AND JUSTIFICATION**

The repeal of the rules in 40 TAC Chapter 1, State Authority Responsibilities, Subchapter G, is necessary because the rules are duplicative of rules in 26 TAC Chapter 300, Subchapter A.

#### COMMENTS

The 31-day comment period ended June 16, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeals.

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system, and Texas Health and Safety Code Chapter 534, Subchapter A, which provides that the executive commissioner of HHSC shall adopt rules related to community center plans, and review, audit, and appeal procedures for community centers.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 29, 2025.

TRD-202503491

Karen Ray

Chief Counsel

Department of Aging and Disability Services

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Proposal publication date: May 16, 2025

For further information, please call: (512) 438-5609



## CHAPTER 2. LOCAL AUTHORITY RESPONSIBILITIES

The executive commissioner of the Texas Health and Human Services Commission (HHSC) adopts the repeal of Chapter 2 in Texas Administrative Code Title 40, Part 1, concerning Local Authority Responsibilities, consisting of §2.51, concerning Purpose; §2.52, concerning Application; §2.53, concerning Definitions; §2.54, concerning Accountability; §2.55, concerning Procurement; §2.56, concerning Community Services Contracting Requirements; §2.57, concerning Provisions for Community Services Contracts; §2.58, concerning Competitive Procurement Methods for Community Services; §2.59, concerning Non-competitive Procurement of Community Services; §2.60, concerning Open Enrollment; §2.61, concerning Consumer Access to Participating Community Services Contracts in Provider Network; §2.62, concerning Monitoring and Enforcing Community Services Contracts; §2.63, concerning References; §2.64, concerning Distribution; §2.151, concerning Most Appropriate and Available Treatment Alternative; and §2.152, concerning Special Considerations.

The repeal of §§2.51 - 2.64, 2.151, and 2.152 are adopted without changes as published in the May 16, 2025, issue of the *Texas Register* (50 TexReg 2960). These rules will not be republished.

#### BACKGROUND AND JUSTIFICATION

The repeal of the rules in 40 TAC Chapter 2, Local Authority Responsibilities is necessary because the rules are duplicative of

rules in 26 TAC Chapter 301, Subchapter A, and 26 TAC Chapter 306, Subchapter D.

#### COMMENTS

The 31-day comment period ended June 16, 2025.

During this period, HHSC did not receive any comments regarding the proposed repeals.

## SUBCHAPTER B. CONTRACTS

### MANAGEMENT FOR LOCAL AUTHORITIES

#### 40 TAC §§2.51 - 2.64

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §533A.0355(a), which provides that the executive commissioner of HHSC shall adopt rules establishing the roles and responsibilities of LIDDAs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 29, 2025.

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Karen Ray

Chief Counsel

Department of Aging and Disability Services

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For further information, please call: (512) 438-5609



## SUBCHAPTER D. MENTAL HEALTH SERVICES--ADMISSION, CONTINUITY, AND DISCHARGE

#### 40 TAC §2.151, §2.152

#### STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §533A.0355(a), which provides that the executive commissioner of HHSC shall adopt rules establishing the roles and responsibilities of LIDDAs.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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TRD-202503493



## TITLE 43. TRANSPORTATION

### PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

#### CHAPTER 7. RAIL FACILITIES

#### SUBCHAPTER G. OFF-SYSTEM RAIL GRADE SEPARATION STATE FUND PROGRAM

##### 43 TAC §§7.120 - 7.134

The Texas Department of Transportation (department) adopts new §§7.120 - 7.134 concerning the Off-System Rail Grade Separation State Fund Program. The new §§7.120 - 7.122, 7.124, 7.125, 7.127, 7.128, 7.130, and 7.132 - 7.134 are adopted without changes to the proposed text as published in the July 4, 2025 issue of the *Texas Register* (50 TexReg 3857). The rules will not be republished. New §§7.123, 7.126, 7.129, and 7.131 are adopted with changes to the proposed text as published in the July 4, 2025 issue of the *Texas Register* (50 TexReg 3857). The rules will be republished.

##### EXPLANATION OF ADOPTED NEW SECTIONS

New §§7.120 - §7.134, contained in new Subchapter G of Chapter 7, describe the policies and procedures for the implementation and administration of the Off-System Rail Grade Separation State Fund Program (Program), as authorized by S.B. 1555 (89th Regular Session, 2025) and codified as Transportation Code, §471.010.

New §7.120, Purpose, states the purpose of the new subchapter.

New §7.121, Definitions, defines the terms used in the new subchapter.

New §7.122, Program Eligibility, sets criteria a project must meet to be eligible for the Program. This includes the statutory criteria that the project must (1) be for the construction of either a highway-rail grade separation structure that will eliminate at least one at-grade rail-highway crossing or a grade-separated pedestrian-rail crossing, (2) be off the state highway system, (3) increase public safety, enhance economic development, or reduce traffic, and (4) be sponsored by the political subdivision that has jurisdiction over the project's location. In order to maximize efficiency and use of available funds, the program must also constitute a logical, self-contained unit of work that could be constructed as an independent project.

New §7.123, Funding and Eligible Costs, sets the allowable costs under the program. To maximize use of funding, allowable costs are limited to direct grade-separation-related costs, including planning, detailed design activities, environmental, right of way acquisition, and utility adjustments. Costs for items such as improving rail capacity or adding mass transit infrastructure, are not allowable, although such an element can be included in the project if it is funded with non-Program funds.

New §7.124, Non-State Funding Match, addresses the statutory requirement that at least 10 percent of total project costs must be provided by a source other than the state as matching funds and the federal regulatory requirement that a railroad participate in the cost of a grade-separation under certain circumstances. The Texas Transportation Commission (commission) may adjust the minimum local matching requirement in accordance with Transportation Code, §222.053. The standard policies apply, that the matching funds must be provided before the work begins, that donated services may be used to reduce the cost of the project but do not constitute matching funds, and that the department's costs of oversight are included as a project cost.

New §7.125, Call for Project Nominations, provides that projects will be selected through a competitive process in order to make the best use of available funding. A program call describing the required application contents will be published in the *Texas Register*.

New §7.126, Nomination Package, requires a project sponsor to submit project nominations in the form prescribed by the department. A complete nomination package must be received by the department by the deadline or it will be deemed ineligible.

New §7.127, Project Evaluation Committee, requires the executive director to appoint a project evaluation committee consisting of department staff to make recommendations for the selection of projects funded under the program.

New §7.128, Nomination Screening, requires the project evaluation committee to screen each nominated project to determine its eligibility under statutory and regulatory requirements. It provides for notification if a project is found ineligible and for an appeals process.

New §7.129, Project Evaluation, requires the project evaluation committee to evaluate the benefits of eligible applications based on statutory requirements, the goals of the program, and specific selection criteria set forth in the program call. The department will provide the evaluation criteria with each program call.

New §7.130, Project Selection and Approval, requires the project evaluation committee to make recommendations for project selection to the department's Railroad Division Director. It further requires that at least 10% of funding be recommended for eligible projects in rural areas, in order to ensure equitable use of funds, unless sufficient rural project nominations are not submitted. The division director will make a final recommendation of selected projects to the commission for approval.

New §7.131, Inclusion of Selected Projects in Planning Documents, requests the project sponsor to include the selected project in the local transportation improvement programs.

New §7.132, Project Implementation, requires the project sponsor and applicable railroad to comply with all applicable laws and regulations, including all applicable state procedures, requirements, and standards and specifications. It requires opportunity for public involvement and any required environmental documentation. An agreement between the state and the project sponsor is required, which must include the responsibilities and duties of the parties, local match funding commitment, the scope and course of the project, and the maximum amount of available funding. As required by Transportation Code, §471.010(d), the agreement must also designate the department to manage the project under the laws and regulations applicable to state highway projects.

New §7.133, Elimination of Project from the Program, provides the department's executive director criteria for eliminating a project after selection. A project may be eliminated from the program if a project sponsor does not meet the requirements of the program, if a project sponsor chooses to withdraw, if significant deviations from the approved scope of work would be required, if construction has not been initiated within three years of project selection, or if the required agreement is not signed within one year after project selection.

New §7.134, Reporting to the Commission, requires the department to submit to the commission annually a report regarding project nominations and selected projects.

#### COMMENTS

The department posted the rules for comment in the July 4, 2025, issue of the *Texas Register*. The department received comments through August 4, 2025. In total the department received comments from two entities. Harris County and the Transportation Advocacy Group of Houston provided comments and proposed language amendments to support the program.

The department received one comment concerning §7.122. The comment requested that eligibility extend to entities with roadway responsibility over the project's location, in addition to having jurisdiction over the project's location. The department agrees that a project may have an entity with jurisdiction over the project's location that is different than the entity with roadway responsibility, and that both entities would serve a critical role. However, the entity with jurisdiction over the location must be the project sponsor and sign the project agreement. No revision is made to the proposed rule, but the department will modify the application to allow entities with roadway responsibility to submit their support of the project.

The department received two comments concerning §7.123. One comment requested to add environmental costs as an eligible cost. The department agrees and has revised the proposed rules to include "environmental" as an eligible cost. The other comment requested that grant funds be allowed to be utilized on eligible projects that are in conjunction with ineligible projects. The department acknowledges this request and finds that §7.123(d) as proposed accomplishes this.

The department received one comment concerning §7.124 requesting that in-kind services be allowed as part of match requirements. The department acknowledges the value of in-kind services and they are permitted to reduce the overall cost of the project, but cannot be considered as matching funds due to accounting and audit constraints. In the application process, the department will clarify that payments for right-of-way acquisition and utility adjustments are eligible costs and can be counted towards match in compliance with §7.124(b). No revision is made to the proposed rule.

The department received one comment concerning §7.126. The request is to ensure city, county, and other special purpose districts can all apply and be eligible for awards within the same region. The proposed language allows for the entity with jurisdiction to apply. The department has modified the proposed language to no longer limit the number of projects a sponsor can submit.

The department received one comment concerning §7.128, requesting that a prescreening period be included in the application process to prevent projects from being rejected for non-compliance with program requirements. The program documents will

provide for a two-step application process, including an initial round with minimal requirements and quick turnaround, followed by a second round with additional project detail requirements. The department will also offer technical assistance during the call for projects. No revisions are made to the proposed rule.

The department received three comments concerning §7.129. The commenter requested that 1) evaluation criteria be released when the application period opens, 2) travel time savings be measured using quantitative numbers, and 3) air quality, flooding, noise, and visual impacts be included when evaluating a project's merit. Regarding the first two comments, the evaluation criteria, which uses both quantitative and qualitative metrics for project evaluation, will be available to project sponsors at the time of the program call. Regarding the third comment, the rule language tracks the statutory language, which provides "increasing public safety, enhancing economic development, and reducing traffic" as the primary project requirements. However, the rule also provides that project nominations may address "any other benefit" of the project for consideration by the Commission. No revision is made to the proposed rule.

The department received one comment concerning §7.130, that rural be defined as all unincorporated areas within counties across the state. The department intends to use census urbanized areas to distinguish urban and rural, which will be outlined in program documents and based on the most current information available at the time of the call. No revision is made to the proposed rule.

The department received one comment concerning §7.131, requesting to ensure a project is eligible for selection even if it is not included in an existing regional Transportation Improvement Program (TIP) prior to selection. Projects do not need to be listed in a TIP prior to selection to be eligible. The proposed language provides that TxDOT will request that the applicable Metropolitan Planning Organization add the project to its TIP after the project is selected. However, proposed subsection (b) has been removed because it was determined that projects funded under this program do not need to be included in the State Transportation Improvement Plan.

The department received one comment concerning §7.132. The comment requests that local governments be permitted to manage the project using the local let process with TxDOT oversight. In compliance with Transportation Code §471.010(d), the department is required to manage the project. No revision is made to the proposed rule.

#### STATUTORY AUTHORITY

The new rules are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §471.010, which authorizes the commission to adopt rules as necessary to implement that section.

The authority for the new rules is provided by S.B. No. 1555, 89th Regular Session, 2025. The primary author and the primary sponsor of that bill are Sen. Robert Nichols and Rep. Jared Patterson, respectively.

#### CROSS REFERENCE TO STATUTES IMPLEMENTED BY THIS RULEMAKING

Transportation Code, §471.010

§7.123. *Funding and Eligible Costs.*

(a) Funding under the program is subject to the Texas Grant Management Standards developed by the comptroller under the Government Code, Chapter 783.

(b) Planning, detailed design activities, environmental, right of way acquisition, and utility adjustments are eligible costs.

(c) A cost is not eligible for funding under the program if it:

(1) was incurred before the department authorizes work to proceed under the agreement required under §7.132 of this subchapter (relating to Project Implementation); or

(2) is related to rail capacity improvements or the addition of mass transit infrastructure.

(d) A project may include elements that are not eligible for funding under the program. Funds used to pay for those elements do not qualify as matching funds under §7.124 of this subchapter (relating to Non-State Funding Match).

*§7.126. Nomination Package.*

(a) To nominate one or more projects during a program call, the project sponsor must submit each nomination in the form prescribed by the department.

(b) The nomination package must present persuasive evidence of support for the proposed project from the affected communities and, if applicable, include a commitment to provide the non-state funding match required by §7.124 of this subchapter (relating to Non-State Funding Match) or an explanation of the project sponsor's eligibility for a funding match adjustment under Transportation Code, §222.053.

(c) A complete nomination package must be received by the department not later than the specified deadline published in the *Texas Register*. A nomination package that fails to include any of the items specified in this section or the respective program call is considered to be incomplete and will not be considered for funding.

(d) The department may request supplemental information as needed to conduct project screening and evaluation.

*§7.129. Project Evaluation.*

The project evaluation committee will evaluate the public safety, economic development enhancement, traffic reduction, and any other benefit of each nominated project that is determined to be eligible under §7.128(a) of this subchapter (relating to Nomination Screening) based on the specific selection criteria set forth in the program call. Evaluation criteria will be provided for each program call.

*§7.131. Inclusion of Selected Projects in Planning Documents.*

If a project selected is to be implemented in a metropolitan area, the department will request that the Metropolitan Planning Organization for that area immediately begin the process required to include the selected project in its Transportation Improvement Program.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

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Angie Parker

Senior General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-3164

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